

LOS ALAMOS NATIONAL LABORATORY DOCUMENT 7500

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LOS ALAMOS NATIONAL LABORATORY FORM 7500

JUNE 1988

This document contains the General Provision clauses for Research and Development subcontracts issued by the University of California, Los Alamos National Laboratory. The majority of the clauses are based upon clauses contained in the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulations (DEAR). Some of the clauses have been developed by the University to comply with the requirements of Contract Number W-7405-ENG-36 between the Department of Energy and the University of California.

INTRODUCTION

Pursuant to the terms of Contract W-7405-ENG-36, the University has agreed to appropriately treat requirements of Federal statutes and Presidential executive orders in subcontracts using funds provided under the Contract. Consequently, many of the standard terms and conditions contained herein are similar to terms and condition used by Federal agencies. However, the University is not a Federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of the University.

DEFINITIONS

As used herein, the terms and conditions set forth below shall have the meanings stated.

(a) "Contract Administrator" - The representative of The Regents of the University of California authorized to execute and/or administer subcontracts on behalf of the Los Alamos National Laboratory.

(b) "DEAR" - The Department of Energy Acquisition Regulations.

(c) "DOE" - The United States Department of Energy.

(d) "FAR" - The Federal Acquisition Regulations.

(e) "Goods" - All tangible property, except land or interest in land, and including tooling, equipment, materials, supplies, etc., required for or produced in the performance of the subcontract.

(f) "Government Contracting Officer" - A representative of the Government with the authority to enter into, administer, and/or terminate Government contracts and make related determinations and findings.

(g) "Government" - The government of the United States of America.

(h) "Head of the Agency" - The Secretary, Deputy Secretary, or Under Secretary of The United States Department of Energy.

(i) "Lower-Tier subcontractor" - A person or legal entity that has entered into an agreement with the Subcontractor for the delivery of goods or services necessary to the Subcontractor's performance of the subcontract.

(j) "Schedule" - Sections A through G of the subcontract document.

(k) "Subcontractor" - The party entering into this agreement with The Regents of the University of California.

(l) "University" - The Regents of the University of California, a California corporation, who operate the Los Alamos National Laboratory

SECTION A

CLAUSES THAT APPLY TO ALL SUBCONTRACTS

Unless specifically cited in the Schedule as not applying or identified in the clause as being self-deleting, the clauses listed below shall apply to all subcontracts into which this document is incorporated.

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A1, Officials Not to Benefit

No member of or delegate to Congress, or resident commissioner shall be admitted to any share or part of the subcontract, or to any benefit arising from it. However, this clause does not apply to the subcontract to the extent that the subcontract is made with a corporation for the corporation's general benefit.

A2, Covenant Against Contingent Fees

(a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain the subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the University shall have the right to annul the subcontract without liability or, in its discretion, to deduct from the subcontract price or consideration or otherwise recover the full amount of the contingent fee.

(b) "Bona fide agency" as used in this clause means an established commercial or selling agency, maintained by a subcontractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or University subcontracts nor holds itself out as being able to obtain any Government contract or University subcontract through improper influence.

"Bona fide employee" as used in this clause means a person employed by a subcontractor and subject to the subcontractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or University subcontracts nor holds out as being able to obtain any Government contracts or University subcontract through improper influence.

"Contingent fee" as used in this clause means any commission, percentage fee, brokerage fee, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or University subcontract.

"Improper influence" as used in this clause means any influence that induces or tends to induce a University or Government employee or officer to give consideration or to act regarding a Government contract or University subcontract on any basis other than the merits of the matter.

A3, Security

(a) Responsibility. The Subcontractor has the duty to safeguard all classified information, special nuclear material, and other Government property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss, and theft the classified documents and material in the Subcontractor's possession in connection with the performance of work under the subcontract. Except as otherwise expressly provided in the subcontract, the Subcontractor shall, upon completion or termination of the subcontract, transmit to the University any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of the subcontract. If retention by the Subcontractor of any classified matter is required after the completion or termination of the subcontract and such retention is approved by the University, the Subcontractor will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the University, the security provisions of the subcontract will continue to apply to the matter retained. Special nuclear material will not be retained after the completion or termination of the

subcontract.

(b) Regulations. The Subcontractor agrees to conform to all security regulations and requirements of the DOE.

(c) Definition of Classified Information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) Definition of Restricted Data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by or is under the control of the Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and that is so designated.

(g) Definition of Special Nuclear Material (SNM). SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) Security Clearance of Personnel. The Subcontractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) Criminal Liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this subcontract may subject the Subcontractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et. seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the University, the Subcontractor shall insert provisions similar to the foregoing in all lower-tier subcontracts and purchase orders under the subcontract.

A4, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

(a) It is the policy of the University and the Government that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts and subcontracts.

(b) The Subcontractor hereby agrees to carry out this policy in the awarding of lower-tier subcontracts to the fullest extent consistent with efficient subcontract performance. The Subcontractor further agrees to cooperate in any studies or surveys that may be conducted by the United States Small Business Administration, the DOE, or the University that may be necessary to determine the extent of the Subcontractor's compliance with this clause.

(c) As used in this subcontract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern

(1) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

The Subcontractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Subcontractors acting in good faith may rely on written representations by their lower-tier subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

A5, Utilization of Women-Owned Small Businesses

(a) It is the policy of the University and the Government that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts and subcontracts let with funds appropriated by Congress.

(b) The Subcontractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the lower-tier subcontracts it awards to the fullest extent consistent with the efficient performance of its subcontract.

(c) "Women-Owned small businesses" as used in this clause means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control" as used in this clause means exercising the power to make policy decisions.

"Operate" as used in this clause means being actively involved in the day-to-day management of the business.

"Small business concern" as used in this clause means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the criteria and size standards established by the U. S. Small Business Administration.

(d) The Subcontractor may rely on written representations by its lower-tier subcontractors regarding their status as women-owned small businesses.

A6, Utilization of Labor Surplus Area Concerns

(a) Policy. It is the policy of the University and the Government to award contracts and subcontracts to concerns that agree to perform substantially in labor surplus areas (LSAs) when this can be done consistent with the efficient performance of the subcontract and at prices no higher than are obtainable elsewhere. The Subcontractor agrees to use its best efforts to place lower-tier subcontracts in accordance with this policy.

(b) Order of Preference. In complying with paragraph (a) above and with paragraph (b) of the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Subcontractor shall observe the following order of preference in

awarding lower-tier subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(c) Definitions. "Labor surplus area" as used in this clause means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern" as used in this clause means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the subcontract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the subcontract price.

A7, Notice of Labor Disputes

(a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the subcontract, the Subcontractor shall immediately give notice, including all relevant information, to the University.

(b) The Subcontractor agrees to insert the substance of this clause, including this paragraph (b), in any lower-tier subcontract to which a labor dispute may delay the timely performance of the subcontract; except that each subcontract shall provide that if its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Subcontractor, as the case may be, of all relevant information concerning the dispute.

A8, Equal Opportunity

(a) If, during any 12-month period (including the 12 months preceding the award of the subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with subparagraphs (b)(1) through (b)(11) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.

(b) While performing this subcontract, the Subcontractor agrees as follows:

(1) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Subcontractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This affirmative action shall include but not be limited to (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the University that explain this clause.

(4) The Subcontractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Subcontractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the University advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Subcontractor shall furnish to the Government all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EE0-1) or any successor form is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Subcontractor shall permit access to its books, records, and accounts by the University, DOE, or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Subcontractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the subcontract may be canceled, terminated, or suspended in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts or subcontracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Subcontractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each lower-tier subcontractor or vendor.

(11) The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the University may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided that if the Subcontractor becomes involved in or is threatened with, litigation with a lower-tier subcontractor or vendor as a result of any direction, the Subcontractor may request the Government to enter into the litigation to protect the interests of the University and the Government.

(c) Notwithstanding any other clause in the subcontract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

A9, Buy American Act

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components" as used in this clause, means those goods incorporated directly into the end product.

"Domestic end product" as used in this clause means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (b)(3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products" as used in this clause means the goods produced or acquired for public use under the subcontract funded by DOE.

(b) The Subcontractor shall deliver only domestic end products, except those

(1) For use outside the United States;

(2) That the University determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the University determines that domestic preference would be inconsistent with the public interest; or

(4) For which the University determines the cost to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the FAR.)

A10, Assignment of Claims

The subcontract or any right, remedy, or obligation arising out of the subcontract is assignable in whole or in part by the University to the Government or its designee. Except as to any payment due hereunder, the subcontract is not assignable by the Subcontractor without the written approval of the University.

A11, Disputes

(a) Except as otherwise provided for in the subcontract, all disputes arising under or relating to the subcontract shall be resolved in accordance with this clause.

(b) "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of subcontract terms, or other relief arising under or relating to the subcontract.

(c) Unless otherwise provided for in the subcontract, a claim by the Subcontractor must be filed within 30 calendar days after the Subcontractor knows or should have known of the facts giving rise thereto.

(d) Any claim by the Subcontractor shall first be presented to the Contract Administrator, who shall attempt to resolve the matter in a reasonable amount of time. If the claim is not resolved by the Contract Administrator in a manner satisfactory to the Subcontractor and the Subcontractor desires to pursue further action, the claim must be presented in writing to the Materials Management Division Leader for a written decision.

(e) The Materials Management Division Leader shall investigate the issues involved in the claim and promptly issue a decision in writing. A copy of that decision shall be mailed to the Subcontractor and shall state the reasons for the decision.

(f) The decision by the Materials Management Division Leader may be reviewed exclusively through the process stated in subsequent paragraphs of this clause.

(g) A claim by the University against the Subcontractor or a decision by the Materials Management Division Leader regarding a claim by the Subcontractor may be submitted to the DOE Contracting Officer for review and a written decision. Any such submittal by the Subcontractor shall be made within 30 calendar days after the Subcontractor receives the Materials Management Division Leader's decision.

(h) The decision of the DOE Contracting Officer shall be issued in a reasonable amount of time and shall be final, unless one of the parties appeals the decision within 30 days from the receipt of the decision to the DOE Board of Contract Appeals. The decision of the Board shall be final and conclusive.

(i) Pending final resolution of any claim, request for relief, appeal or action arising under or relating to the subcontract, the Subcontractor shall proceed diligently with performance of the subcontract and in accordance with any direction of the Contract Administrator.

(j) In connection with any proceeding at the Laboratory under this clause, the Subcontractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Any proceeding before DOE shall be in accordance with its rules of procedure.

A12, Preference for Privately Owned U.S.-Flag Commercial Vessels

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of goods that may be transported on ocean vessels on privately owned U.S.-flag commercial vessels. Such transportation shall be accomplished whenever

(1) Any goods located within or outside the United States that may be transported by ocean vessel are

(i) Procured, contracted for, or otherwise obtained for the subcontract;
or

(ii) Furnished to or for the account of any foreign nation without provision for reimbursement.

(2) Funds or credits are advanced or the convertibility of foreign currencies is guaranteed in connection with furnishing such goods that may be transported by ocean vessel.

Note: This requirement does not apply to small purchases as defined in 41 CFR 1-3.6 or to cargoes carried in the vessels of the Panama Canal Company.

(b) The Subcontractor agrees as follows:

(1) To utilize privately-owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved whenever shipping any goods under the conditions set forth in paragraph (a) above, pursuant to the subcontract to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

Note: Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590, phone (202) 426-4610.

(2) To furnish within 15 working days following the date of loading for shipments originating within the United States or within 25 working days following the date of loading for shipments originating outside the United States a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo covered by the provisions in paragraph (a) above to both the University and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20290.

(3) To insert the substance of the provisions of this clause in all lower-tier subcontracts issued pursuant to the subcontract, except for small purchases as defined in 41 CFR 1-3.6.

A13, Disposition of Goods

Upon completion or termination of all work under the subcontract, the Subcontractor shall prepare for shipment, deliver, or dispose of all goods received from the University and all residual goods produced in connection with the performance of the subcontract that may be directed by the University or as specified in other provisions of the subcontract. All goods produced or required to be delivered under the subcontract become and remain the property of the Government.

A14, Gratuities

(a) The right of the Subcontractor to proceed may be terminated by written notice if, after notice and hearing, the University or DOE determines that the Subcontractor, its

agent, or another representative

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the University; and

(2) Intended, by the gratuity, to obtain a subcontract or favorable treatment under a subcontract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If the subcontract is terminated under paragraph (a) above, the University is entitled

- (1) To pursue the same remedies as in a breach of the subcontract, and
- (2) In addition to any other damages provide by law, to exemplary damages of not less than three or more than ten times the cost incurred by the Subcontractor in giving gratuities to the person concerned, as determined by the University or DOE. (This subparagraph (c)(2) is applicable only if the subcontract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the subcontract.

A15, Convict Labor

The Subcontractor agrees not to employ any person undergoing sentence of imprisonment in performing the subcontract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

A16, Antikickback Procedures

(a) Definitions.

"Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to the University, a University employee, a subcontractor, or a subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a subcontract at any tier relating to the prime contract.

"Person" means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract" means contract W-7405-ENG-36 between the United States Department of Energy (DOE) and The University of California, Los Alamos National Laboratory (University) for the purpose of obtaining supplies, materials, equipment, or services.

"University employee" means any officer, employee, or agent of the University.

"Subcontract" means a contract or contractual action entered into by the University or a higher-tier subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under the prime contract.

"Subcontractor" (1) means any person, other than the University, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under the prime contract or under a subcontract entered into in connection with the prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the University or a higher-tier subcontractor.

"Subcontractor employee" means any officer, partner, employee, or agent of a

subcontractor.

(b) The Anti-Kickback Act of 1986 (41 USC 51-58) (the Act) prohibits any person from

(1) Providing, attempting to provide, or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the subcontract price charged by a subcontractor to the University or higher-tier subcontractor.

(c) (1) The Subcontractor will have in place and follow reasonable procedures designed to prevent and detect possible violations of the Act in its own operations and in its direct business relationships in connection with the prime contract.

(2) When the Subcontractor has reasonable grounds to believe that a violation of the Act may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the Materials Management Division Leader, the Controller, or the Laboratory Counsel of the University.

(3) The Subcontractor shall cooperate fully with any investigation of a possible violation of the Act.

(4) Regardless of the subcontract tier at which a kickback was provided, accepted, or charged in connection with the prime contract in violation of the Act, the University may

(i) Offset the amount of the kickback against any monies owed by the University under the subcontract, and/or

(ii) Direct the Subcontractor to withhold from sums owed to a lower-tier subcontractor the amount of the kickback. The University may direct that the monies withheld be paid to DOE or, if DOE has offset the monies under the prime contract, be paid to the University.

(iii) Nothing in this clause precludes any contractual or common law remedy available to the University.

(5) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5), in all lower-tier subcontracts under the subcontract.

A17, Affirmative Action for Handicapped Workers

(This clause applies if the subcontract exceeds \$2500.)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped persons without discrimination based upon their physical or mental handicap in all employment practices such as employment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

(1) The Subcontractor agrees to post employment notices stating (i) the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped persons and (ii) rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the University.

(3) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ and advance in employment qualified physically and mentally handicapped persons.

(c) Noncompliance. If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Lower-Tier Subcontracts. The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order exceeding \$2500 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

A18, Contract Work Hours and Safety Standards Act - Overtime Compensation

(This clause applies if the subcontract exceeds \$2500)

(a) Overtime Requirements. No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work that may require or involve the employment of laborers or mechanics (see FAR 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation, Liability for Unpaid Wages, and Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the Government (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wage required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for Unpaid Wages and Liquidated Damages. Upon its own action or upon written request of an authorized representative of the Department of Labor, the University shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract; any Federal contract with the same Subcontractor, or any Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same Subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and Basic Records.

(1) The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by the Department of Labor regulations at 29 CFR 5-5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of the University, the DOE, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Subcontractor or lower-tier subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

A19, Examination of Records by Comptroller General

(a) This clause applies if the subcontract exceeds \$10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until three years after final payment under this subcontract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to this subcontract.

(c) The Subcontractor agrees to include in lower-tier subcontracts under the subcontract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until three years after final payment under the lower-tier subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the lower-tier subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the lower-tier subcontract. "Lower-Tier subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) lower-tier subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of the subcontract, or (3) costs and expenses of the subcontract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

A20, Affirmative Action for Special Disabled and Vietnam Era Veterans

(This clause applies if the subcontract exceeds \$10,000)

(a) Definitions.

"Appropriate Office of the State employment service system" as used in this clause means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Subcontractor proposes to fill from within its own organization" as used in this clause means employment openings for which no one outside the Subcontractor's organization, including any affiliates, subsidiaries, and the parent companies, will be considered and includes any openings that the Subcontractor proposes to fill from regularly established "recall" lists.

"Openings that the Subcontractor proposes to fill under a customary and traditional employer-union hiring arrangement" as used in this clause means employment openings that the Subcontractor proposes to fill from union halls under their customary and traditional employer-union hiring relationship.

"Suitable employment openings" as used in this clause

(1) Includes but is not limited to openings that occur in jobs categorized as

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;
- (v) Technical;

(vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over three days, and part-time employment, but not openings that the Subcontractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam era veterans without discrimination based upon their disability or veterans' status in all employment practices such as

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing Openings.

(1) The Subcontractor agrees to list all suitable employment openings existing at subcontract award or occurring during subcontract performance at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing the subcontract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source

or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent subcontracts. The Subcontractor may advise the State system when it is no longer bound by the subcontract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the University's or the Government's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings that occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Subcontractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Subcontractor agrees to post employment notices stating (i) the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the University.

(3) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Subcontractor is bound by the terms of the Act and is committed to take affirmative action to employ and advance in employment qualified special disabled and Vietnam era veterans.

(f) Noncompliance. If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

A21, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

(This clause applies if the subcontract exceeds \$10,000)

(a) The Subcontractor shall report at least annually, as required by the Secretary of Labor, on

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the work force of the Subcontractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31st of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Subcontractors may select an ending date (1) as of the end of any pay period during the period January through March 1st of the year of the report is due, or (2) as of December 31st if the Subcontractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 USC 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 USC 2012 to identify themselves to the Subcontractor. The invitation shall state that (1) the information is voluntarily provided, (2) the information will be kept confidential, (3) disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and (4) the information will be used only in accordance with the regulations promulgated under 38 USC 2012.

(f) Subcontracts. The Subcontractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

A22, Walsh-Healey Public Contracts Act

If the subcontract is for the manufacturing or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000 and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply.

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now or may hereafter be in effect.

(b) All employees whose work relates to the subcontract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

A23, Audit-Negotiation

(This clause applies if the subcontract exceeds \$25,000 and was entered into by negotiation.)

(a) Examination of Costs. If the subcontract is a cost-reimbursement, incentive, time-and-material, labor-hour, or price-redeterminable or any combination of these, the Subcontractor shall maintain--and the University or representatives of the University, including employees of the Government, shall have the right to examine and audit-- books,

records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred in performing the subcontract.

This right of examination shall include inspection at all reasonable times of the Subcontractor's facilities or parts of them engaged in performing the subcontract.

(b) Cost or Pricing Data. If, pursuant to law, the Subcontractor has been required to submit cost or pricing data in connection with pricing the subcontract or any modification to the subcontract, the University or representatives of the University, including employees of the Government, shall have the right to examine and audit all books, records, documents, and other data of the Subcontractor (including computations and projections) related to negotiating, pricing, or performing the subcontract or modification in order to evaluate the accuracy, completeness, and currency of the cost or pricing data submitted, along with the computations and projections used.

(c) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the University or appropriately authorized representatives of the University, including employees of the Government, shall have the right to examine and audit books, records, other documents, and supporting materials for the purpose or evaluating (1) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) Availability. The Subcontractor shall make available at its office(s) at all reasonable times the materials described in paragraphs (a) and (b) above for examination, audit, or reproduction until three years after final payment under the subcontract or for any shorter period specified in Subpart 4.7 of the FAR, Contractor Records Retention, or for any longer period required by statute or by other clauses of the subcontract. In addition

(1) If the subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after the resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the subcontract shall be made available until such appeals, litigation, or claims are disposed of.

(e) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (e), in all cost reimbursable lower-tier subcontracts over \$10,000 and alter the clause only as necessary to identify properly the contracting parties and the University under the Government prime contract.

A24, Notice and Assistance Regarding Patent and Copyright Infringement

(This article applies if the subcontract exceeds \$25,000)

(a) The Subcontractor shall report to the Government, through the University, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement, based upon the performance of the subcontract, of which the Subcontractor has knowledge.

(b) In the event of any claim or suit against the University or the Government on account of any alleged patent or copyright infringement arising out of the performance of the subcontract or out of the use of any goods furnished or work or services performed under the subcontract, the Subcontractor shall furnish to the University, when requested by the University, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.

(c) The Subcontractor agrees to include, and require inclusion of, this clause in all lower-tier subcontracts at any tier for goods or services (including construction and architect-engineer subcontracts and those for goods, models, samples, or design or testing services) expected to exceed \$25,000.

A25, Preference for U.S.-Flag Air Carriers

(This clause applies if the subcontract exceeds \$25,000 and involves international air transportation of personnel [and their personal effects] or property is required in the performance of the subcontract.)

(a) "International air transportation" as used in this clause means transportation by air between a place in the United States and a place outside the United States or between two places, both of which are outside the United States.

"United States" as used in this clause means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier" as used in this clause means an air carrier holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Subcontractor agrees, in performing work under the subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) If the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a certification on vouchers involving such transportation essentially as follows:

Certification of Unavailability of U.S.-Flag Air Carriers

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the FAR): [State reasons]...(End of certification.)

(e) The Subcontractor shall include the substance of this clause, including this paragraph (e), in each lower-tier subcontract or purchase order under the subcontract that may involve international air transportation.

A26, Clean Air and Water

(This clause applies if the subcontract exceeds \$100,000)

(a) Definitions.

"Air Act" as used in this clause means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards" as used in this clause means

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in Section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation plan as described in Section 111(c) or Section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards" as used in this clause means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

"Compliance" as used in this clause means compliance with

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility" as used in this clause means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a Subcontractor or lower-tier subcontractor used in the performance of a subcontract or lower-tier subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator of a designee of the Environmental Protection Agency determines that independent facilities are collocated in one geographical area.

"Water Act" as used in this clause means the Clean Water Act (33 U.S.C. 1251, et. seq.).

(b) The Subcontractor agrees

(1) To comply with the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of the subcontract.

(2) That no portion of the work required by the subcontract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when the subcontract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the subcontract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this paragraph (b)(4). under Prime Contract W-7405-ENG-36 with the Department of Energy.

SECTION B

CLAUSES THAT APPLY TO ALL TYPES OF SUBCONTRACTS

The clauses listed below are appropriate to all types of subcontracts regardless of pricing arrangement. Clauses in this section shall be incorporated into subcontracts by specifically citing clause numbers in the Schedule.

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B1, Organizational Conflicts of Interest - General

(a) To the best of its knowledge and belief, and except as otherwise disclosed, the Subcontractor warrants that there are no relevant facts that could lead to organizational conflicts of interest, as defined in DEAR 909.570, or that the Subcontractor has disclosed all relevant information.

(b) If after award, an organizational conflict of interest regarding the subcontract is discovered, the Subcontractor agrees that an immediate and full disclosure in writing shall be made to the University; the disclosure shall include a description of the action that the Subcontractor has taken or proposes to take to avoid or mitigate such conflict. The University may, however, terminate the subcontract for its convenience if it deems such termination to be in the best interest of the University or the Government.

(c) If the Subcontractor was aware of an organizational conflict of interest before the award of the subcontract and did not disclose the conflict to the University, the University may terminate the subcontract for default.

(d) The provisions of this clause shall be included in all lower-tier subcontracts for work to be performed that is similar to the service provided by the Subcontractor.

(e) Before a subcontract modification is executed where (1) the statement of work is modified to add new work, (2) the period of performance is significantly extended, or (3) the parties to the subcontract are changed, the University will request and the Subcontractor must submit either a disclosure or representation of organizational conflicts of interest or an update of the previously submitted disclosure or representation.

B2, Organizational Conflicts of Interest - Special Clause

(a) Purpose. The primary purpose of this clause is to ensure that the Subcontractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) that relate to the work under the subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of the subcontract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a Subcontractor, lower-tier subcontractor, cosponsor, joint venturer, or consultant or in any similar capacity.

(1) Technical Consulting and Management Support Services.

(i) The Subcontractor shall be ineligible to participate in any capacity in DOE contracts, subcontracts, or proposals therefore (solicited or unsolicited) that stem directly from the Subcontractor's performance of work under the subcontract. Furthermore, unless so directed in writing by the University, the Subcontractor shall not perform any technical consulting or management support services under the subcontract on any of its goods or services or the goods or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on contracts or subcontracts for technical consulting and management support services.

(ii) If the Subcontractor, in the performance of the subcontract, prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its goods or services in such statement of work or specifications unless so directed in writing by the University, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph (b)(1) shall preclude the Subcontractor from offering or selling its standard commercial goods to the University or the Government.

(2) Access To and Use of Information.

(i) If the Subcontractor, in the performance of the subcontract, obtains access to information, such as University or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93-579), or data that have not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the University it shall not (A) use such information for any private purpose unless the information has been released or otherwise made available to the public; (B) compete for work for the University or DOE based on such information for a period of six months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first; (C) submit an unsolicited proposal to the University or the Government that is based on such information until one year after such information is released or otherwise made available to the public; and (D) release such information unless such information has previously been released or otherwise made available to the public by the University or the DOE.

(ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (P.L. 93-579), or other confidential or privileged technical, business, or financial information under the subcontract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) Subject to patent, data, and security provisions of the subcontract, the Subcontractor shall have the right to use technical data it first produces under the subcontract if the requirements of the subcontract have been met.

(c) Disclosure After Award.

(1) The Subcontractor agrees that if after award it discovers an organizational conflict of interest regarding the subcontract, an immediate and full disclosure shall be made in writing to the University and shall include a description of the action that the Subcontractor has taken or proposes to take to avoid or mitigate such conflicts. The University may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of the University or the Government.

(2) If the Subcontractor was aware of an organizational conflict of interest before the award of the subcontract and did not disclose the conflict to the University, the University may terminate the subcontract for default.

(d) Lower-Tier Subcontracts.

(1) The Subcontractor shall include this clause, including this paragraph (d), in subcontracts of any tier that involve performance of work of the type specified in paragraph (b)(1) above or access to information of the type covered in paragraph (b)(2) above.

(2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting, or management support services work as defined in DEAR 909.570, the Subcontractor shall obtain for the University a disclosure statement or representation in accordance with DOE regulations in effect at the time, from each intended lower-tier subcontractor or consultant. The Subcontractor shall not enter into any lower-tier subcontract nor engage any consultant unless the University shall have first notified the Subcontractor that there is little or no likelihood that an organizational conflict of interest exists or that, despite the existence of a conflict of interest, the award is in the best interests of the University and the Government.

(e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning the subcontract, the University may terminate the subcontract for default, may disqualify the Subcontractor for subsequent related contractual efforts, and may pursue such other remedies that may be permitted by law or the subcontract.

(f) Waiver. Requests for waiver under this clause shall be directed in writing to the University and shall include a full description of the requested waiver and the reasons to support it. If it is determined to be in the best interests of the University and the Government, the University shall grant such a waiver in writing.

(g) Modifications. Before a subcontract modification is executed where (1) the statement of work is modified to add new work, (2) the period of performance is significantly extended, or (3) the parties to the subcontract are changed, the University will request and the Subcontractor must submit either a disclosure or representation of organizational conflicts of interest or an update of the previously submitted disclosure or representation.

B3, Facilities Capital Cost of Money

(a) Facilities capital cost of money will be an allowable cost under the subcontract.

(b) By having included an item of proposed allowable cost for facilities capital cost of money in the proposal resulting in the subcontract, the Subcontractor is deemed to have elected to claim facilities capital cost of money.

B4, Waiver of Facilities Capital Cost of Money

If the Subcontractor did not include facilities capital cost of money as a proposed allowable cost, it is deemed that the Subcontractor waived the right to claim it under the subcontract.

B5, Price Reduction for Defective Cost or Pricing Data

(a) If any price, including profit or fee, negotiated in connection with the subcontract or any cost reimbursable under the subcontract was increased by any significant amount because (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction.

(b) Any reduction in the subcontract price under paragraph (a) above due to defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.

B6, Price Reduction for Defective Cost or Pricing Data - Modifications

(a) This clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed \$100,000, except that this clause does not apply to any modification for which the price is

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause or any cost reimbursable under the subcontract was increased by any significant amount because (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the

Subcontractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction. This right to a price reduction is limited to that reduction resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the subcontract price under paragraph (b) above because of defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.

B7, Lower-Tier Subcontractor Cost or Pricing Data

(a) Before awarding any lower-tier subcontract expected to exceed \$100,000 when entered into, or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) The Subcontractor shall require the lower tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.

(c) In each lower-tier subcontract that exceeds \$100,000 when entered into, the Subcontractor shall insert either

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the lower-tier subcontract; or

(2) The substance of the Subcontractor Cost or Pricing Data - Modifications clause.

B8, Lower-Tier Subcontractor Cost or Pricing Data - Modifications

(a) The requirements of paragraphs (b) and (c) of this clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed \$100,000 and shall be limited to such modifications.

(b) Before awarding any lower-tier subcontract expected to exceed \$100,000 when entered into, or pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Subcontractor shall require the lower-tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.

(d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in each lower-tier subcontract that exceeds \$100,000 when entered into.

B9, Competition in Subcontracting

The Subcontractor shall select lower-tier subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the subcontract.

B10, Notice of Total Small Business Set-Aside

(a) Definition. "Small business concern" as used in this clause means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the size standards defined in Section 3 of the Small Business Act (15 U.S.C. 632).

(b) General.

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from the solicitation will be made to a small business concern.

(c) Agreement. A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the subcontract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service subcontracts.

B11, Limitation on Subcontracting

By submission of an offer and execution of a subcontract, the Subcontractor agrees that in performance of the subcontract in the case of a subcontract for

(a) Services (except construction), at least 50 percent of the cost of subcontract performance incurred for personnel shall be expended for employees of the concern.

(b) Supplies (other than procurement from a regular dealer in such supplies), the concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

B12, Notice of Partial Small Business Set-Aside

(a) Definitions.

"Labor surplus area" as used in this clause means a geographical area identified by the Department of Labor as an area of labor surplus.

"Labor surplus area concern" as used in this clause means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

"Perform substantially in labor surplus areas" as used in this clause means that

the costs incurred under the subcontract because of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the subcontract price.

"Small business concern" as used in this clause means a concern including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the size standards defined in Section 3 of the Small Business Act (15 U.S.C. 632).

(b) General.

(1) As identified elsewhere in the solicitation, a portion of this requirement has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of the solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the subcontract(s) for the non-set-aside portion and adjusted to reflect transportation and other costs appropriate for the selected Subcontractor(s).

(4) (i) The Subcontractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. These concerns fall into two groups:

(A) Group 1 - Small business concerns that are also labor surplus area concerns or

(B) Group 2 - Other small business concerns.

(ii) Negotiations will be conducted with the concern in Group 1 that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue, first with concerns in Group 1 and then with concerns in Group 2, until a subcontract or subcontracts are awarded for the entire set-aside portion.

(5) The University reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) Agreement.

(1) If awarded a subcontract as a small business - labor surplus area concern, the Subcontractor agrees that it will perform or cause the subcontract to be performed substantially in areas classified as labor surplus areas at the time of award or performance of the subcontract. However, if an area selected by the Subcontractor is no longer classified as a labor surplus area at the time of performance, the Subcontractor will try to select another area for performance that is classified at the time as a labor surplus area.

(2) In performing the subcontract, a manufacturer or regular dealer submitting an offer in its own name agrees to furnish only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service subcontracts.

B13, Small Business and Small Disadvantaged Business Subcontracting Plan

(a) This clause does not apply to small business concerns.

(b) Definitions. "Commercial product" as used in this clause means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product that, in the

opinion of the University, differs only insignificantly from the Subcontractor's commercial product.

"Subcontract" as used in this clause means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for goods or services required to perform the contract or subcontract.

(c) Upon request by the University, the Subcontractor shall submit and negotiate a subcontracting plan, where applicable, that addresses separately subcontracting with small business concerns and small disadvantaged business concerns and that shall be included in and made a part of the resultant subcontract. The subcontracting plan shall be negotiated within the time specified by the University. Failure to submit and negotiate the subcontracting plan shall make the Subcontractor ineligible for award of a subcontract.

(d) The Subcontractor's subcontracting plan shall include the following:

(1) Expressed in terms of percentages of total planned subcontracting dollars, goals for the use of small business concerns and small disadvantaged business concerns as subcontractors. The Subcontractor shall include all lower-tier subcontracts that contribute to subcontract performance and may include a proportionate share of goods and services that are normally allocated as indirect costs.

(2) A statement of

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns;
and

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

(3) A description of the principal types of goods and services to be subcontracted and an identification of the types planned for subcontracting to small business concerns and to small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential sources for solicitations (e.g., existing company source lists, the Procurement Automated Source System [PASS] of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).

(6) A statement about whether the Subcontractor included indirect costs in establishing subcontracting goals and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business concerns and with small disadvantaged business concerns.

(7) The name of the person employed by the Subcontractor who will administer the Subcontractor's subcontracting program and a description of the duties of that person.

(8) A description of the efforts the Subcontractor will make to ensure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for lower-tier subcontracts.

(9) Assurances that the Subcontractor will include the Utilization of Small Business Concerns and Small Disadvantaged Business Concerns clause in all subcontracts that offer further subcontracting opportunities and that the Subcontractor will require all lower-tier subcontractors (except small business concerns) who receive subcontracts exceeding \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan

similar to the plan agreed to by the Subcontractor.

(10) Assurances that the Subcontractor will

(i) Cooperate in any studies or surveys that may be required by the University;

(ii) Submit periodic reports to allow the University or the Government to determine the extent of compliance by the Subcontractor with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts (SF 295 is not required), in accordance with instructions on the form, except that the report shall be submitted quarterly on or before the 15th of January, April, July, and October and upon subcontract completion, and except that the report shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of the subcontract; and

(iv) Ensure that its lower-tier subcontractors agree to submit Standard Form 294 in accordance with the instructions in paragraph (10)(iii) above.

11) A recitation of the types of records, including establishing source lists, the Subcontractor will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a facility-wide or company-wide basis unless otherwise indicated):

(i) Source lists, guides, and other data that identify small and small disadvantaged business concerns;

(ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns;

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, and indicating (A) whether small business concerns were solicited and if not, why not; (B) whether small disadvantaged business concerns were solicited and if not, why not; and (C) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact trade associations, business development organizations, and conferences and trade fairs to locate small and small disadvantaged business sources.

(v) On a subcontract-by-subcontract basis, records to support award data submitted by the Subcontractor to the University or the Government, including the name, address, and business size of each lower-tier subcontractor. Subcontractors having company or division-wide annual plans need not comply with this requirement.

(e) To effectively implement this plan to the extent consistent with efficient subcontract performance, the Subcontractor shall do the following:

(1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules to facilitate the participation by such concerns. When the Subcontractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all make-or-buy decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(f) A master subcontracting plan on a facility-wide or division-wide basis that contains all the elements, except goals, required by (d) above may be incorporated by reference as a part of the subcontracting plan required of the Subcontractor by this

clause, provided that (1) the master plan has been approved by the Government, (2) the Subcontractor provides copies of the approved master plan and evidence of its approval to the University, and (3) goals and any deviations from the master plan deemed necessary by the University to satisfy the requirements of the subcontract are set forth in the individual subcontracting plan.

(g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the Subcontractor's production generally for both commercial and noncommercial products rather than solely to the subcontract. In these cases, and with the concurrence of the Government, the Subcontractor shall submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the Federal agency awarding the Subcontractor its first prime contract requiring a subcontracting plan during the fiscal year or by an agency satisfactory to the University.

(3) The approved plan shall remain in effect during the Subcontractor's fiscal year for all of the Subcontractor's commercial products.

(h) Prior compliance of the Subcontractor with other such subcontracting plans under previous subcontracts will be considered by the University in determining the responsibility of the Subcontractor for award of the subcontract.

(i) The failure of the Subcontractor or lower-tier subcontractor to comply in good faith with (1) the Utilization of Small Business Concerns and Small Disadvantaged Business Concerns clause, or (2) an approved plan required by this clause shall be a material breach of the subcontract.

B14, Labor Surplus Area Subcontracting Program

(a) Definitions.

"Labor surplus area" as used in this clause means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern" as used in this clause means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the subcontract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the subcontract price.

(b) The Subcontractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for lower-tier subcontracts within their capabilities when the lower-tier subcontracts are consistent with the efficient performance of the subcontract at prices no higher than obtainable elsewhere. The Subcontractor shall:

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Subcontractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns clause in lower-tier subcontracts that offer substantial LSA subcontracting opportunities; and

(5) Maintain records showing (i) the procedures adopted and (ii) the

Subcontractor's performance, to comply with this clause. The records will be kept available for review by the Government until the expiration of one year after the award of this subcontract, or for such longer period as may be required by any other clause of this subcontract or by applicable law or regulations.

(c) The Subcontractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the University of the names of lower-tier subcontractors.

B15, Privacy Act Notification

The Subcontractor will be required to design, develop, or operate a system of records on individuals, to accomplish a federal agency function subject to the Privacy Act of 1974, P. L. Law 93-579, as amended (5 U.S.C. 552a), and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

B16, Privacy Act

(a) (1) "Operation of a system of records" as used in this clause means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record" as used in this clause means any item, collection or grouping of information about an individual that is maintained by or on behalf of a Government agency, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the person's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or a photograph.

(3) "System of records on individuals" as used in this clause means a group of any records under the control of any Government agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(b) The Subcontractor agrees to

(1) Comply with the Privacy Act of 1974 (the Act) and the rules and regulations of the DOE issued under the Act in the design, development, or operation of any system of records on individuals to accomplish a Government agency function when the subcontract specifically identifies the systems of records and the design, development, or operation work that the subcontractor is to perform;

(2) Include the Privacy Act notification contained in the subcontract, in every solicitation and resulting lower-tier subcontract, and in every lower-tier subcontract awarded without a solicitation when the statement of work in the proposed lower-tier subcontract requires the design, development, or operation of a system of records on individuals to accomplish a federal agency function; and

(3) Include this clause, including this subparagraph (3), in all lower-tier subcontracts awarded under the subcontract that requires the design, development, or operation of such a system of records.

(c) If the Act is violated, a civil action may be brought against the Government agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish a Government agency function, and criminal penalties may be imposed upon the officers or employees of the Government agency when the violation concerns the operation of a system of records on individuals to accomplish a Government agency function. For purposes of the Act, when the subcontract is for the operation of a system of records on individuals to accomplish a Government agency function, the Subcontractor and any employee of the Subcontractor is considered to be an employee of the Government agency.

B17, Patent Rights (Long Form)

(a) Definitions.

(1) "Subject invention" means any invention or discovery of the Subcontractor conceived or first actually reduced to practice in the course of or under this subcontract, and includes any art, method, process, machine manufacture, design or composition of matter, or any new and useful improvement thereof or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

(2) "Subcontract" means any subcontract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and which includes any assignment or substitution of parties.

(3) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority, government corporation, or other government establishment of the Executive Branch of the government of the United States of America.

(5) "To the point of practical application" means to manufacture (in the case of a composition or product), to practice (in the case of a process), or to operate (in the case of a machine) and under such conditions to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(6) "Patent Counsel" means the Department of Energy Patent Counsel assisting the University.

(b) Allocation of Principal Rights.

(1) Assignment to the Government. The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Subcontractor under paragraphs (b)(2) and (c) of this clause.

(2) Greater Rights Determinations. The Subcontractor or the employee-inventor with authorization of the Subcontractor may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (c) of this clause on identified inventions in accordance with 41 CFR 9-9.109-6(d). Such requests must be submitted to Patent Counsel (with notification by Patent Counsel to the University) at the time of the first disclosure pursuant to paragraph (e)(2) of this clause, or not later than nine months after conception or first actual reduction to practice, whichever occurs first, or such longer periods that may be authorized by Patent Counsel (with notification by Patent Counsel to the University) for good cause shown in writing by the Subcontractor.

(c) Minimum Rights of the Subcontractor.

(1) Subcontractor License. The Subcontractor reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a subject invention and any resulting patent to which the Government acquires title. The license shall extend to the Subcontractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so when the subcontract was awarded. The license shall be transferable only with the approval of DOE except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.

(2) Revocation Limitations. The Subcontractor's nonexclusive license retained pursuant to paragraph (c)(1) of this clause and sublicenses granted under it may be revoked or modified either in whole or in part by DOE but only to the extent necessary to achieve expeditious practical application of the subject invention under DOE's published licensing regulations (10 CFR 781) and only to the extent an exclusive license is actually granted. This license shall not be revoked in that field of use and/or geographical areas in which the Subcontractor or its sublicensee has bought the invention to the point of

practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.

(3) Revocation Procedures. Before modification or revocation of the license or sublicense, pursuant to paragraph (c)(2) of this clause, DOE shall furnish the Subcontractor a written notice of its intention to modify or revoke the license and any sublicense thereunder, and the Subcontractor shall be allowed 30 days, or such longer periods that may be authorized by the Patent Counsel (with notification by Patent Counsel to the University), to show cause why the license or any sublicense should not be modified or revoked. In accordance with 10 CFR 781, the Subcontractor shall have the right to appeal any decision concerning the modification or revocation of its license or any sublicense.

(4) Foreign Patent Rights. Upon written request to Patent Counsel (with notification by Patent Counsel to the University) and subject to DOE security regulations and requirements, there shall be reserved to the Subcontractor or to the employee-inventor with authorization to the Subcontractor the patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, provided that

(i) When specifically requested by DOE and three years after issuance of a foreign patent disclosing said subject invention, the recipient of such rights shall furnish DOE a report setting forth the commercial use that is being made or is intended to be made of said invention and the steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government, including any Government agency, and domestic municipal governments of the states, unless the Head of the Agency or designee determines that it would not be in the public interest to acquire the license for the states and domestic municipal governments.

(iii) Subject to the rights granted in (c)(1), (2) and (3) of this clause, the Head of the Agency or designee shall have the right to terminate the foreign patent rights granted in this paragraph (c)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Head of the Agency or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or will be taken within a reasonable time.

(iv) Subject to the rights granted in paragraphs (c)(1), (2) and (3) of this clause, commencing four years after foreign patent rights are accorded under this paragraph (c)(4), the Head of the Agency or designee shall have the right to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable and appropriate under the circumstances to terminate said foreign patent rights, in whole or in part, following a hearing upon notice to the public and upon a petition by an interested person justifying such hearing:

(A) Upon review of such material as he deems relevant and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Head of the Agency or designee may require, if the Head of the Agency or designee determines that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Head of the Agency or designee at such hearing that the recipient has taken effective steps or within a reasonable time thereafter is expected to take such steps necessary to accomplish substantial use of the invention.

(d) Filing of Patent Applications.

(1) Regarding each subject invention in which the Subcontractor or the inventor requests foreign patent rights in accordance with paragraph (c)(4) of this clause, a request may also be made for the right to file and prosecute the U. S. application on behalf of the US Government. If such request is granted, the Subcontractor or inventor shall file a domestic patent application on the invention within six months after the

request for foreign patent rights is granted or such longer period of time that may be approved by the Patent Counsel for good cause shown in writing by the requester. Regarding the invention, the requester shall promptly notify the Patent Counsel (with notification by Patent Counsel to the University) of any decision not to file an application.

(2) For each subject invention on which a domestic patent application is filed by the Subcontractor or inventor, the Subcontractor or inventor shall

(i) Within two months after the filing of a patent application or within two months after submission of the invention disclosure if the patent application has been filed previously, deliver to the Patent Counsel a copy of the application as filed including the filing date and serial number;

(ii) Within six months after filing the application or within six months after submitting the invention disclosure if the application has been filed previously, deliver to the Patent Counsel a duly executed and approved assignment to the Government on a form specified by the Government;

(iii) Provide the Patent Counsel with the original patent grant promptly after a patent is issued on the application; and

(iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(3) Regarding each subject invention for which the Subcontractor or inventor has requested foreign patent rights, and in accordance with applicable statutes and regulations, the Subcontractor or inventor shall file a patent application on the invention in each foreign country in which such request is granted, within one of the following periods:

(i) Eight months from the date of filing a corresponding United States application or, if such an application is not filed, six months from the date the request was granted.

(ii) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application when such filing has been prohibited by security reasons; or

(iii) Such longer periods that may be approved by the Patent Counsel for good cause shown in writing by the Subcontractor or inventor.

(4) Subject to the license specified in paragraphs (c)(1), (2) and (3) of this clause, the Subcontractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Subcontractor or inventor fails to have a patent application filed in accordance with paragraph (d)(3) of this clause or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent and not less than 60 days before the expiration period for any action required by any patent office, the Subcontractor or inventor shall notify the Patent Counsel of such failure or decision, and shall deliver to the Patent Counsel the executed instruments necessary for the conveyance specified in this paragraph.

(e) Identification of Invention, Disclosures, and Reports.

(1) The Subcontractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed. These procedures shall include maintaining laboratory notebooks or equivalent records and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Subcontractor shall furnish DOE a description of these procedures so that it may evaluate and determine their effectiveness.

(2) The Subcontractor shall furnish the following to the Patent Counsel (with notification by the Patent Counsel to the University) on a DOE approved form:

(i) A written report containing full and complete technical information concerning each subject invention within six months after conception or first actual reduction to practice, whichever occurs first during or under the subcontract, but in any event before any sale, public use, or public disclosure of such invention known to the Subcontractor. The report shall identify the subcontract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under paragraph (c)(4) of this clause and any request to file a domestic patent application under (d)(1) of this clause; however, such request shall be made within the period set forth in paragraph (b)(2) of this clause. When an invention is reported under this paragraph (e)(2)(i), it shall be presumed to have been conceived or first actually reduced to practice in the course of or under the subcontract, unless the Subcontractor contends it was not so made, in accordance with paragraph (g)(2)(ii) of this clause.

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing subject inventions and subcontracts awarded containing a Patent Rights clause for that period and certifying that

(A) The Subcontractor's procedures for identifying and disclosing subject inventions as required by this paragraph (e) have been followed throughout the reporting period;

(B) All subject inventions have been disclosed or that there are no such inventions; and

(C) All lower-tier subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded;

(iii) A final report on a DOE-approved form within three months after completion of the subcontract work listing all subject inventions and all lower-tier subcontracts awarded containing a Patent Rights clause and certifying that

(A) All subject inventions have been disclosed or that there were no such inventions and

(B) All lower-tier subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded.

(3) To effect the provisions of this clause, the Subcontractor shall obtain patent agreements from all persons in its employ who perform any part of the work under the subcontract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Subcontractor agrees that the University and the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause. If the Subcontractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, but the Government or its employees shall never be liable for any publication thereof.

(f) Publication. It is recognized that during the course of the work under the subcontract, the Subcontractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice during or under the subcontract. So that public disclosure of such information will not adversely affect the patent interests of DOE or the Subcontractor, patent approval for release or publication shall be secured from Patent Counsel before any such release or publication.

(g) Forfeiture of Rights in Unreported Subject Inventions.

(1) At the request of the Head of the Agency or designee, the Subcontractor shall forfeit to the Government all rights in any subject invention that the Subcontractor

fails to report to Patent Counsel (with notice by Patent Counsel to the University) within six months after the time the Subcontractor

(i) Files or causes to be filed a United States or foreign patent application on subject invention; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Subcontractor shall not forfeit rights in a subject invention if, within the time specified in paragraph (1)(i) or (1)(ii) of this paragraph (g), the Subcontractor

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice during or under the subcontract and delivers the same to Patent Counsel (with notification by Patent Counsel to the University) or

(ii) Contending that the invention is not a subject invention, nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel (with notification by Patent Counsel to the University); or

(iii) Establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.

(3) Pending written assignment of the patent application and patent on a subject invention determined by the Head of the Agency or designee to be forfeited (such determination to be a final decision under the Disputes clause of FAR 52.233-1), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (g) shall be in addition to and shall not supersede other rights and remedies that the Government may have regarding subject inventions.

(h) Examination of Records Relating to Inventions.

(1) Until the expiration of three years after final payment under the subcontract, DOE or its authorized representative shall have the right to examine any books, including laboratory notebooks, records, documents, and other supporting data of the Subcontractor that DOE or its authorized representatives reasonably deem pertinent to the discovery or identification of subject inventions or to determine compliance with the requirements of this clause.

(2) DOE or its authorized representatives shall have the right to examine all books, including laboratory notebooks, records and documents of the Subcontractor about the conception or first actual reduction to practice of inventions in the same field of technology as the work under this subcontract to determine whether any such inventions are subject inventions if the Subcontractor refuses or fails to

(i) Establish the procedures of paragraph (e)(1) of this clause; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within 30 days after the University or DOE notifies the Subcontractor of such a deficiency.

(i) Withholding of Payment (Not applicable to lower-tier subcontracts).

(1) Any time before final payment of the amount of the subcontract, and if it deems such action warranted, the University may withhold payment until a reserve not exceeding \$50,000 or five percent of the amount of the subcontract, whichever is less, shall have been set aside if, in the opinion of DOE, the Subcontractor fails to

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this clause; or

(ii) Disclose any subject invention pursuant to paragraph (e)(2)(i) of this

clause; or

(iii) Deliver the interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (j)(5) of this clause; or

(v) Using a DOE-approved form, convey to the Government the title and/or rights of the Government in each subject invention as required by this clause.

(2) The reserve or balance shall be withheld until DOE has determined that the Subcontractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this subcontract shall not be made by the University before the Subcontractor delivers to the Patent Counsel all disclosures of subject inventions and other information required by paragraph(c)(2)(i) of this clause, the final report required by paragraph (c)(2)(iii)of this clause, and the Patent Counsel has issued a patent clearance certification to the University.

(4) At its discretion, the University may decrease or increase the sums withheld up to the maximum authorized above. If the Subcontractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed \$50,000 or one percent of the amount of the subcontract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the subcontract. The withholding of any amount or subsequent payment of it shall not be construed as a waiver of any rights accruing to the Government under the subcontract.

(j) Lower-Tier Subcontracts.

(1) The Subcontractor will include the Patent Rights -Small Business Firms or Nonprofit Organizations clause, suitably modified to identify the parties, in all lower-tier subcontracts regardless of the tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization. In all other lower-tier subcontracts, regardless of the tier, for experimental, developmental, demonstration, or research work, the Subcontractor will include this Patent Rights clause, modified to identify the parties. If a lower-tier subcontractor refuses to accept the clause or if, in the opinion of the Subcontractor, the clause is inconsistent with DOE's patent policies, the Subcontractor shall

(i) Promptly submit written notice to DOE through the University setting forth the reasons for the lower-tier subcontractor refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Not proceed with the lower-tier subcontract without the written authorization of the University.

(2) Except as may be otherwise provided in this clause, the Subcontractor shall not acquire any rights in its lower-tier subcontractor's subject invention for the Subcontractor's own use (as distinguished from such rights that may be required solely to fulfill the Subcontractor's subcontract obligations to the University in the performance of the subcontract) in any lower-tier subcontract by using a subcontract as consideration therefore.

(3) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor to the University and DOE under the provisions of a Patent Rights clause in any lower-tier subcontract hereunder may, at the discretion of the University, be furnished to the Subcontractor for transmission to the University and the DOE.

(4) The Subcontractor shall promptly notify DOE through the University in writing upon the award of any lower-tier subcontract containing a Patent Rights clause by identifying the lower-tier subcontractor, the work to be performed under the lower-tier subcontract, and the dates of award and estimated completion. Upon the request of the University or the DOE, the Subcontractor shall furnish a copy of the lower-tier

subcontract.

(5) The Subcontractor shall identify all subject inventions of the lower-tier subcontractor of which it acquires knowledge in the performance of the subcontract and shall notify the Patent Counsel (with notification by the Patent Counsel to the University) promptly upon the identification of the inventions.

(6) It is understood that the Government is the third party beneficiary of any lower-tier subcontract clause granting rights to the Government in subject inventions, and the Subcontractor hereby assigns to the Government all rights that the Subcontractor would have to enforce the lower-tier subcontractor's obligations for the benefit of the Government regarding subject inventions. The Subcontractor shall not be obligated to enforce the agreements of any lower-tier subcontractor hereunder relating to the obligations of the lower-tier subcontractor to the Government regarding subject inventions.

(k) Background Patents (Applies if the subcontract is for \$250,000 or more).

(1) "Background patent" means a domestic patent covering an invention or discovery that is not a subject invention and that is owned or controlled by the Subcontractor at any time through the completion of the subcontract

(i) That the Subcontractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications) that is a subject of research, development, or demonstration work performed under the subcontract.

(2) The Subcontractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent to practice a subject invention of the subcontract by or for the Government in research, development, and demonstration work only.

(3) The Subcontractor also agrees that upon written application by DOE, it will grant to responsible parties for purposes of practicing a subject invention of the subcontract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Subcontractor believes that exclusive or partially exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Subcontractor.

(4) Notwithstanding the foregoing paragraph (k)(3), the Subcontractor shall not be obligated to license any background patent if the Subcontractor demonstrates to the satisfaction of the Head of the Agency or designee that

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources or

(ii) The Subcontractor or its licensees are supplying the subject matter covered by background patent in sufficient quantity and at reasonable prices to satisfy market needs or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(1) Atomic Energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Subcontractor or its employees regarding any invention or discovery made or conceived in the course of or under the subcontract.

(2) Except as otherwise authorized in writing by DOE, the Subcontractor will obtain patent agreements to effect the provisions of paragraph (1)(1) from all persons who perform any part of the work under the subcontract, except nontechnical personnel, such as clerical employees and manual laborers.

(m) Limitation of Rights.

Nothing contained in this Patent Rights clause shall be deemed to give the Government any rights regarding any invention other than a subject invention except as set forth in the Patent Rights clause of the subcontract regarding background patents and, if included, the facilities license.

B18, Patent Rights - Small Business Firms or Nonprofit Organizations

(a) Definitions.

(1) "Invention" means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.) or any novel variety of plant that is or may be protected under the Plant Variety Protection Act (7 USC 2321 et seq.).

(2) "Subject invention" means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under the subcontract, provided that in the case of a variety of plant, the date of determination (as defined in Section 44(d) of the Plant Variety Protection Act, 7 USC 2401(d)) must also occur during the period of subcontract performance.

(3) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made," when used in relation to any invention, means the conception or first reduction to practice of such invention.

(5) "Small business firm" means a small business concern as defined at Section 2 of P.L. 85-536 (15 USC 632) and implementing regulations of the Administrator of the Small Business Administration. For this clause, the size standard for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC 501(c) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 USC 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) Patent Counsel assisting the University.

(b) Allocation of Principal Rights. The Subcontractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 USC 203. With respect to any subject invention in which the Subcontractor retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title, and Filing of Patent Application by Subcontractor.

(1) The Subcontractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). The disclosure shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication on

sale or public use of the invention; whether a manuscript describing the invention has been submitted for publication; and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the Subcontractor will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.

(2) The Subcontractor will elect in writing whether to retain title to any such invention by notifying the Patent Counsel within two years of disclosure to the Patent Counsel. However, in any case in which publication, on sale or public use, has initiated the one-year statutory period during which valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Patent Counsel to a date that is no more than sixty days before the end of the statutory period.

(3) The Subcontractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, before the end of any statutory period during which valid patent protection can be obtained in the United States after a publication on sale or public use. The Subcontractor will file patent applications in additional countries or international patent offices either within ten months of the corresponding initial patent application or within six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing under subparagraphs (c)(1), (2), and (3) may, at the discretion of the Patent Counsel, be granted.

(d) Conditions Under Which the Government May Obtain Title. The Subcontractor will convey to the DOE, upon written request, title to any subject invention

(1) If the Subcontractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) above or elects not to retain title, provided that the DOE may only request title within 60 days after learning of the failure of the Subcontractor to disclose or elect within the specified times;

(2) In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph (c) above, provided, however, that if the Subcontractor has filed a patent application in a country after the time specified in paragraph (c) above prior to its receipt of the written request of the Patent Counsel, the Subcontractor shall continue to retain title in that country; or

(3) In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on a patent on a subject invention.

(e) Minimum Rights to Subcontractor and Protection of the Subcontractor's Rights to File.

(1) The Subcontractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Subcontractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Subcontractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and includes the right to grant sublicenses of the same scope to the extent that the Subcontractor was legally obligated to do so at the time the subcontract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of the part of the Subcontractor's business to which the invention pertains.

(2) The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR 404 and 10 CFR 781. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified

at the discretion of DOE to the extent the Subcontractor, its licensees, or its domestic subsidiaries or affiliates have filed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed thirty days (or such other time as DOE may authorize for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with 37 CFR 404 and 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) Subcontractor Action to Protect the Government's Interest.

(1) The Subcontractor agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and

(ii) Convey title to DOE when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each subject invention made under the subcontract so that the Subcontractor can comply with the disclosure provisions of paragraph (c) above and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) above. The Subcontractor shall instruct such employees through its employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit filing patent applications before United States or foreign statutory bars.

(3) The Subcontractor will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent in any country not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The Subcontractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement:

"The invention was made with Government support under [identify the subcontract] awarded by the University of California. The Government has certain rights in this invention."

(5) Upon request, the Subcontractor agrees to

(i) Provide a report prior to the close-out of the subcontract listing all subject inventions or stating that there were none;

(ii) Provide a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the Subcontractor has applied for a patent;
and

(iii) Provide not more than annually listings of all subject inventions that were disclosed to DOE during the applicable reporting period.

(g) Subcontracts.

(1) The Subcontractor will include this clause, suitably modified to identify the parties, in all lower-tier subcontracts, regardless of tier, for experimental,

developmental, or research work to be performed by a small business firm or a domestic nonprofit organization. The lower-tier subcontractor will retain all rights provided for the Subcontractor in this clause and the Subcontractor will not, as part of the consideration for awarding the subcontract, obtain rights in the lower-tier subcontractor's subject inventions.

(2) The Subcontractor will include in all other lower-tier subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR 9-9.107-5(a) or 9-9.107-6 as appropriate, modified to identify the parties.

(3) In the case of subcontracts at any tier, DOE, the lower-tier subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this clause constitute a subcontract between the lower-tier subcontractor and DOE with respect to those matters covered by this clause, provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions. The Subcontractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information that DOE may reasonably specify. The Subcontractor also agrees to provide additional reports that DOE may request in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 USC 202(c)(5), DOE agrees that it will not disclose such information to persons outside the Government without permission of the Subcontractor.

(i) Preference for United States Industry. Notwithstanding any other provision of this clause, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights. The Subcontractor agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of DOE to require the Subcontractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that

(1) Such action is necessary because the Subcontractor or assignee has not taken or is not expected to take within a reasonable time effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Subcontractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Subcontracts with Nonprofit Organizations. If the Subcontractor is a nonprofit organization, it agrees that

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization that has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Subcontractor;

(2) The Subcontractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 USC 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Subcontractor with respect to subject inventions after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support for scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Subcontractor has determined that the small business firm has a plan or proposal for marketing the invention that, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms, provided that the Subcontractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Subcontractor. However, the Subcontractor agrees that the Secretary of Commerce may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary of Commerce's review discloses that the Subcontractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications. The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

B19, Filing of Patent Applications on Classified Subject Matter

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of the subcontract classified "Secret" or higher and by citing the 30-day provision below, the Subcontractor shall transmit the proposed application to the University. The University and/or the Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or whether the issuance of a patent should be otherwise delayed under pertinent Government statutes or regulations. The Subcontractor shall observe any instructions of the University regarding the manner of delivery of the patent application to the United States Patent Office, but the Subcontractor shall not be denied the right to file the application. If the University fails to give any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Subcontractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of the subcontract classified "Confidential," the Subcontractor shall furnish to the University a copy of the application for determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent Government statutes or regulations.

(c) When the subject matter of the subcontract is classified for reasons of security, the Subcontractor shall not file or cause to be filed in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of the subcontract without first obtaining written approval of the University.

(d) When filing any patent application coming within the scope of this clause, the Subcontractor shall observe all applicable security regulations covering the transmission

of classified subject matter and shall promptly furnish to the University the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Subcontractor shall identify by separate letter and identify by agency and number the subcontract(s) that require security classification markings to be placed on the application.

(e) The Subcontractor agrees to include and require the inclusion of this clause in all lower-tier subcontracts that cover or are likely to cover classified subject matter.

B20, Patent Indemnity

(a) The Subcontractor shall indemnify the University and the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of goods, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under the subcontract, or out of the use or disposal by or for the account of the Government of such goods or construction work.

(b) This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the University and/or the Government of the suit or action alleging such infringement and shall have been given such opportunity that is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to

(1) an infringement resulting from compliance with specific written instructions of the University directing a change in the goods to be delivered or to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor;

(2) an infringement resulting from addition to or change in goods furnished or construction work performed that was made subsequent to delivery or performance; or

(3) a claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

B21, Waiver of Indemnity

Any provision or clause of the subcontract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing the subcontract, of any invention covered by the United States patents identified in the schedule and waives indemnification by the Subcontractor regarding such patents.

B22, Authorization and Consent

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of the subcontract or any part hereof or any amendment hereto or any lower-tier subcontract hereunder.

B23, Additional Data Requirements

(Does not apply if the subcontract is for the conduct of basic or applied research as set out elsewhere in the subcontract to be performed solely by a college or university and the estimated cost is not in excess of \$500,000.)

(a) In addition to the data as defined in the Rights in Data clause or other equivalent included in the subcontract and specified elsewhere in the

subcontract to be delivered, the University may, at any time during subcontract performance or within a period of three years after acceptance of all items to be delivered under the subcontract, order any data first produced or specifically used in the performance of the subcontract.

(b) The Rights in Data clause or other equivalent included in the subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to deliver any data the withholding of which is authorized by the Rights in Data or other equivalent clause of the subcontract or data that are specifically identified in the subcontract as not subject to this clause.

(c) When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form for reproduction and for delivery.

(d) The University may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in paragraph (a) above.

B24, Rights in Data - General

(a) Definitions.

"Computer software" as used in this clause means computer programs, computer data bases, and documentation thereof.

"Data" as used in this clause means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" as used in this clause means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating, and attachment characteristics; functional characteristics; and performance requirements; except that for computer software, it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formula, and flow charts of the software.

"Limited rights data" as used in this clause means data other than computer software developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged .

"Technical data" as used in this clause means data other than computer software that are of a scientific or technical nature.

"Restricted computer software" as used in this clause means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published, copyrighted computer software, including minor modifications of such computer software.

"Unlimited rights" as used in this clause means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly in any manner and for any purpose and to have or permit others to do so.

"Limited rights" as used in this clause means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of clause B25 if included in the subcontract.

"Restricted rights" as used in this clause means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice of clause B26, if included in the subcontract, or as otherwise may be provided in a collateral agreement incorporated in and made part of the subcontract, including minor modifications of such computer software.

(b) Allocations of Rights

(1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in

(i) Data first produced in the performance of the subcontract;

(ii) Form, fit, and function data delivered under the subcontract;

(iii) Data delivered under the subcontract, except for restricted computer software, that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under the subcontract; and

(iv) All other data delivered under the subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) below.

(2) The Subcontractor shall have the right to

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of the subcontract, unless provided otherwise in paragraph (d) below;

(ii) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of the subcontract to the extent provided in paragraph (c)(1) below.

(c) Copyright.

(1) Data First Produced in the Performance of the Subcontract. Unless provided otherwise in paragraph (d) below, the Subcontractor may establish, without prior approval of the University, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of the subcontract and published in academic, technical or professional journals, symposia proceedings, or similar academic, technical or professional journals, symposia proceedings, or similar works. The prior express written permission of the University is required to establish claim to copyright subsisting in all other data first produced in the performance of the subcontract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notices of 17 USC 401 or 402 and acknowledgment of Government sponsorship, including the subcontract number, to the data when such data are delivered to the University, as well as when the data are published or deposited for registration as a published work in the US Copyright Office. For data other than computer software, the Subcontractor grants to the Government and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on

behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data Not First Produced in the Performance of the Subcontract. The Subcontractor shall not, without prior written permission of the University, incorporate in data delivered under the subcontract any data not first produced in the performance of the subcontract and that contains the copyright notice of 17 USC 401 and 402, unless the Subcontractor identifies such data and grants to the Government or acquires on its behalf a license of the same scope as set forth in paragraph (c)(1) above, provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in clause B26 below, if included in the subcontract, or as otherwise may be provided in a collateral agreement incorporated in or made part of the subcontract.

(3) Removal of Copyright Notices. The University agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.

(d) Release, Publications, and Use of Data.

(1) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of the subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations or unless otherwise provided below in this paragraph or expressly set forth in the subcontract.

(2) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of the subcontract that contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the University.

(3) The Subcontractor agrees not to establish claim to copyright in computer software first produced in the performance of the subcontract without prior written permission of the University. When such permission is granted, the University shall specify appropriate terms to assure dissemination of the software. The Subcontractor shall promptly deliver to the University or to the Patent Counsel designated by the University a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled and other terms pertaining to the computer software to which claim to copyright is made.

(e) Unauthorized Marking of Data.

(1) Notwithstanding any other provisions of the subcontract concerning inspection or acceptance, if any data delivered under the subcontract are marked with the notices specified in clauses B25 or B26 below and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by the subcontract, the University may at any time either return the data to the Subcontractor or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:

(i) The University shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period or a longer time not exceeding 90 days approved in writing by the University for good cause shown, the University shall have the right

to cancel or ignore the markings at any time after said period and the data will not longer be made subject to any disclosure prohibitions.

(iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(i) above, the University shall consider such written justification and determine whether the markings are to be canceled or ignored. If the University determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the University determines with concurrence of the Head of the Agency that the markings are not authorized, the University shall furnish the Subcontractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the University's decision. The University shall continue to abide by the markings under this paragraph (e)(iii) until final resolution of the matter either by the University's determination becoming final, in which instance the University shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions, or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) above may be modified in accordance with DOE regulations implementing the Freedom of Information Act (5 USC 552), if necessary, to respond to a request thereunder.

(3) This paragraph (e) does not apply if the subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the US Coast Guard subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent that the University's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Subcontractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act including, pursuant to the Disputes clause of the subcontract, as applicable, that may arise as the result of the University removing or ignoring authorized markings on data delivered under the subcontract.

(f) Omitted or Incorrect Markings.

(1) Data delivered to the University without either the limited rights or restricted rights notice as authorized by paragraph (g) below or the copyright notice required by paragraph (c) above shall be deemed to have been furnished with unlimited rights, and the University assumes no liability for disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the University, the Subcontractor may request, within six months or a longer time approved by the University for good cause shown after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the University may agree to do so if the Subcontractor

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the University has no liability with respect to the disclosure, use, or reproduction of any such data made before the addition of the notice or resulting from the omission of the notice.

(2) The University may also (i) permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies

the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) corrects any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

(1) When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) above are specified to be delivered under the subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to the University under the subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the University is to be treated as limited rights data and not restricted computer software.

(h) Subcontracting. The Subcontractor has the responsibility to obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the University under the subcontract. If a lower-tier subcontractor refuses to accept terms affording the Government such rights, the Subcontractor shall promptly bring such refusal to the attention of the University and not proceed with lower-tier subcontract award without further authorization.

(i) Relationship to Patents. Nothing contained in this clause shall imply a license to the University under any patent or be construed as affecting the scope of any license or other right otherwise granted to the University.

(j) The Subcontractor agrees, except as may be otherwise specified in the subcontract for specific data items listed as not subject to this paragraph, that the University or an authorized representative may, up to three years after acceptance of all items to be delivered under the subcontract, inspect at the Subcontractor's facility any data withheld pursuant to paragraph (g)(1) above for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the University that there would be a possible conflict of interest if the inspection were made by a particular representative, the University shall designate an alternate inspector.

B25, Additional Paragraph (g)(2) to Clause B24, Rights in Data - General

(g) (2) Notwithstanding subparagraph (g)(1) of clause B24, Rights in Data - General, the subcontract may identify and specify the delivery of limited rights data, or the University may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the University and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of clause B24, in accordance with such notice:

Limited Rights Notice

(a) These data are submitted with limited rights under University Subcontract No. _____ (and lower-tier subcontract _____, if appropriate). These data may be reproduced and used by the University and the Government with the express limitation that they will not, without written permission of the University, be used for purposes of manufacture nor disclosed outside the University or the Government; except that the University and the Government may disclose these data outside the University or the Government for the following purposes, if any, provided that the University or the Government makes such

disclosure subject to prohibition against further use and disclosure:

(1) This proprietary data may be disclosed for evaluation under the restriction that the proprietary data be retained in confidence and not further disclosed;

(2) This proprietary data may be disclosed to other contractors or subcontractors participating in the University's or the Government's program of which the subcontract is part for information or use in connection with the work performed under their contracts or subcontracts and under the restriction that the proprietary data be retained in confidence and not be further disclosed; or

(3) This proprietary data may be used by the University, the Government, or others on their behalf for emergency repair or overhaul work under the restriction that the proprietary data be retained in confidence and not be further disclosed.

This notice shall be marked on any reproduction of these data in whole or in part.

B26, Additional Paragraph (g)(3) to Clause B24, Rights in Data - General

(g)(3)(i) Notwithstanding subparagraph (g)(1) of clause B24, Rights in Data - General, the subcontract may identify and specify the delivery of restricted computer software, or the University may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Subcontractor may affix the following "Restricted Rights Notice" to the computer software, and the University and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of clause B24, in accordance with this notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under University Subcontract No. _____ (and lower-tier subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the University or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the subcontract.

(b) This computer software may be

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any University or Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service subcontractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided that the University or the

Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied or use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without the disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in or incorporated in the subcontract.

(e) This Notice shall be marked on any reproduction of this computer software in whole or in part.

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice
Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in Subcontract No. _____ (and lower-tier subcontract _____, if appropriate) with...[name of Subcontractor and lower-tier subcontractor].

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibition, with the minimum rights set forth in paragraph (b) of this clause, unless the Subcontractor includes the following statement with such copyright notice: "Unpublished--Rights reserved under the Copyright Laws of the United States."

B27, Rights in Data - Special Works

(a) The term "data" as used herein means recorded information regardless of form or characteristic, such as writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) that are specified to be delivered under the subcontract. The term includes data such as management studies and data produced under support services subcontracts but does not include financial reports, cost analyses, and other information incidental to subcontract administration.

(b) All data first produced or composed in the course of or under the subcontract shall be the sole property of the Government. Except with the prior written permission of the University, the Subcontractor agrees not to assert any rights at common law or in equity or to establish any claim to statutory copyright in such data. The Subcontractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others so to do without the written consent of the University or until such time as the University or the Government may have released such data to the public.

(c) The Subcontractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive, and irrevocable license throughout the world

(1) To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data that are not first produced or composed in the performance of the subcontract but that are incorporated in the work furnished under the subcontract; and

(2) To authorize others to do so.

(d) The Subcontractor shall indemnify and save and hold harmless the University and the Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses

(1) For violation of proprietary rights, copyrights, or rights or privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under the subcontract; or

(2) Based upon libelous, defamatory, or other unlawful matter contained in such data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

B28, Rights in Proposal Data

Except for technical data contained on pages * of the Subcontractor's proposal dated * that are asserted by the Subcontractor as being proprietary data, it is agreed that as a condition of the award of the subcontract and notwithstanding the provisions of any notice appearing on the proposal, the University and the Government shall have the right to use, duplicate, and disclose the technical data contained in the proposal upon which the subcontract is based and have other do so for any purpose whatsoever.

*Identified in Section F of the Schedule.

B29, Special Test Equipment

(a) "Special test equipment" as used in this clause means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a subcontract. These testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment that are mechanically, electrically, or electronically interconnected to become a new functional entity and to cause the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar goods or services. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and facility equipment items used for general facility testing purposes.

(b) The Subcontractor may either acquire or fabricate special test equipment at University expense when the equipment is not otherwise itemized in the subcontract and when the prior approval of the University has been obtained. At least 30 days in advance, the Subcontractor shall provide the University with a written notice of the Subcontractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall include an estimated aggregate cost of all items and components of the equipment, the individual cost of which is less than \$1000, and shall include the following information on each item or component of equipment costing \$1000, or more:

(1) The end use application and function of each proposed special test unit and identification of special characteristics and the reasons for the classifications of the test unit as special test equipment;

(2) A complete description of the items to be acquired and the

items to be fabricated by the Subcontractor;

(3) The estimated cost of the item of special test equipment or component; and

(4) A statement that intrafacility screening of the Subcontractor's and Government-owned special test equipment and components has been accomplished and that no such equipment or components are available for use in performing the subcontract.

(c) The University may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Subcontractor. Such University-furnished items shall be subject to the Property clause, except that the University shall not be obligated to deliver such items any sooner than the Subcontractor could have acquired or fabricated them after expiration of the 30-day period for notice in paragraph (b) of this clause. However, unless the University notifies the Subcontractor of its decision to furnish the items within the 30-day period and subject to any other applicable provisions of the subcontract, the Subcontractor may proceed to acquire or fabricate the equipment or components.

(d) In any lower-tier subcontract that provides that special test equipment or components may be acquired or fabricated for the University, the Subcontractor shall insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Subcontractor shall furnish the names of such lower-tier subcontractors to the University.

(e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Subcontractor shall comply with paragraph (b) above. In so complying, the Subcontractor shall identify the change order that requires the proposed acquisition, fabrication, or modification.

B30, Property Furnished "As Is"

(a) The University makes no warranty whatsoever regarding Government property furnished "as is," except that the property is in the same condition as when placed at the f.o.b. point specified in the solicitation as when inspected by the Subcontractor pursuant to the solicitation or, if not inspected by the Subcontractor, as when last available for inspection under the solicitation.

(b) The Subcontractor may repair any property made available "as is." Such repair will be at the Subcontractor's expense except as otherwise provided in this clause. Such property may be modified at the Subcontractor's expense, but only with the written permission of the University. Any repair or modification of property furnished "as is" shall not affect its title with the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation and if such change will adversely affect the Subcontractor, the Subcontractor shall, upon receipt of the property, notify the University detailing the facts and, as directed by the University, either

(1) Return such property at the University's expense or otherwise dispose of the property; or

(2) Effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Subcontractor, the University shall equitably adjust any contractual provisions affected by the return, disposition, or

repair in accordance with the procedures provided for in the Changes clause of the subcontract. The foregoing provisions for adjustment are the exclusive remedy available to the Subcontractor, and the University shall not be otherwise liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the Property clause of the subcontract.

B31, Government Supply Sources

The University may issue the Subcontractor an authorization to use Government supply sources in the performance of the subcontract. Title to all property acquired by the Subcontractor under such an authorization shall vest in the Government unless otherwise specified in the subcontract. Such property shall not be considered to be Government-furnished property as distinguished from Government property. The provisions of the Property clause, except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

B32, Foreign Ownership, Control, or Influence Over Subcontractor

(a) For purposes of this clause, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the US or a state or other jurisdiction within the US that is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or

(4) Any person who is not a US citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a Subcontractor by a foreign interest is such that a reasonable basis exists for concluding that the compromise of classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710 may result.

(c) For purposes of this clause "Subcontractor" means any subcontractor at any tier.

(d) The Subcontractor shall immediately provide the University written notice of any changes in the extent and nature of FOCI over the Subcontractor that would affect the answers to the questions in the Certification submitted for the solicitation that resulted in the subcontract. Further, notice of changes in ownership or control that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the University.

(e) In those cases where a Subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Subcontractor to avoid or mitigate foreign influences.

(f) If the DOE at any time determines that the Subcontractor is or is potentially subject to FOCI, the Subcontractor shall comply with such instructions that the University shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

(g) The Subcontractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (g), in all lower-tier subcontracts under the subcontract that will require access to classified information or a significant quantity of special nuclear material. The Subcontractor shall also require such lower-tier subcontractors to submit a completed certification required in DEAR 952.204-73 and covered in University Form 812 before award of a lower-tier subcontract. Information to be provided by a lower-tier subcontractor pursuant to this clause will be submitted to the University.

(h) Information submitted by a Subcontractor as required pursuant to this clause shall be treated by the University and the DOE to the extent permitted by law as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a Subcontractor obtain and retain the security clearances required by the subcontract. This clause shall not operate as a limitation on the University's or the DOE's rights, including the University's right to terminate the subcontract.

(j) The University may terminate the subcontract for default if

(1) The Subcontractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the University's instructions about safeguarding classified information, or make this clause apply to lower-tier subcontractors; or

(2) If, in the University's judgment, the Subcontractor creates a FOCI situation to avoid performance or a termination for default. (The University may terminate the subcontract for convenience if the Subcontractor becomes subject to FOCI and for reasons other than avoidance of performance of the subcontract cannot or chooses not to avoid or mitigate the FOCI problem.)

B33, Work on University or Government Premises

To the extent that the Subcontractor's work under the subcontract involves performance by the Subcontractor at University or Government-owned sites or facilities, the following provisions shall apply:

(a) Indemnify and Hold Harmless. The Subcontractor shall indemnify and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract and from all laborers', materialsmen's, and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government.

(b) The Subcontractor shall

(1) At any time upon request of the University, submit a sworn statement setting forth the work performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each, and that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

(2) Promptly notify the University, in writing, of any claim, demand, cause of action, suit, or lien brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claim, demand, cause of action, suit, or lien and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will

enable the University and the Government to protect their respective interests by litigation or otherwise.

The final payment may be withheld until the Subcontractor, if required, has delivered to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof, as the University may require, and if required in either case, an affidavit that as far as he has knowledge or information, the receipts include all the labor and goods for which a lien could be filed; but the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall reimburse the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

(c) Cleaning Up. The Subcontractor shall at all times keep Government or University premises where the work is performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its Subcontractors; and at the completion of the work, it shall remove all rubbish from and about the building and all of its and its lower-tier subcontractors' tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In case of a dispute between the Subcontractor and lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish or, in case the same be not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

(d) Employees. The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for his duties and so inform the Subcontractor, the Subcontractor shall remove such person from work under the subcontract and that person shall not again, without written permission of the University, be assigned to work under the subcontract.

(e) Insurance. The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract or in any event sufficient to protect the University and the Government from any and all public liability and Workmen's Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University with one copy of certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors' compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.

(f) Safety and Health. The Subcontractor shall take all reasonable precautions in performing the work under the subcontract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of the University and the DOE. The University shall notify the Subcontractor in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. This corrective action shall include, at a minimum, that the Subcontractor submit a management program and implementation plan to the University for review and approval within 30 days after the date of award of the subcontract. If the Subcontractor fails to comply with said regulations or requirements communicated to the Subcontractor, the University may without prejudice to any other legal or contractual rights of the University issue an order stopping all or any part of the work; thereafter a start order for resumption of the work may be issued at the discretion of the University. The

Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

B34, Health and Safety Instructions

(a) DOE requires that the University review the health and safety program of each Subcontractor if the Subcontractor has employees on full-time assignment at the Los Alamos National Laboratory ("Laboratory"). Compliance requires the University to alert you to the following requirements:

(1) All of the Subcontractor's local supervisors shall ensure that the University (the Contract Administrator and Laboratory Group HSE-3, Safety) is notified immediately of any occupational injury or illness that occurs on Laboratory-controlled premises regardless of where and when treated.

(2) The Subcontractor's performance shall be reviewed at intervals deemed necessary by the University to ensure that the Subcontractor is in compliance with DOE regulations.

(3) The University will investigate incidents occurring on Laboratory-controlled premises involving personal injury requiring more medical attention than first aid, significant damage to property of the Government or the Subcontractor) or of possible public concern.

(b) The following information shall also be furnished in writing for work to be performed at Laboratory facilities:

(1) Average number of full-time employees required by the Subcontractor and

(2) Name, address, and telephone number of the local supervisor or company official to be notified if the above employees became injured or ill.

B35, Convict Labor

The Subcontractor agrees not to employ any person undergoing sentence of imprisonment in performing the subcontract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

B36, Cost Accounting Standards

(a) Unless the Cost Accounting Standards Board (CASB) has prescribed rules or regulations exempting the Subcontractor or the subcontract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (P. L. 91-379), in connection with the subcontract, the Subcontractor shall

(1) By submission of a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by regulations of the CASB. The practices disclosed for the subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and lower-tier subcontracts being performed by the Subcontractor and that contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the Government Contracting Officer or the University that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the University or the Government.

(2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting performance cost data concerning the subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or lower-tier subcontract subject to CASB requirements, the change must be applied prospectively to the subcontract and

the Disclosure Statement must be amended accordingly. If the subcontract price or cost allowance of the subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.

(3) Comply with all CAS in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed Certificate of Current Cost or Pricing Data. The Subcontractor shall also comply with any CAS that hereafter becomes applicable to a subcontract or lower-tier subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability of such subcontract or lower-tier subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of the subcontract if the subcontract cost is affected by a change that, pursuant to paragraph (a)(3) above, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.

(ii) Negotiate with the Government Contracting Officer or the University to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of this paragraph (4), provided that no agreement may be made under this provision that will increase costs paid by the University or the Government.

(iii) When the Government Contracting Officer or the University and the Subcontractor agree to a change to a cost accounting practice, other than a change under paragraph (4)(i) above, negotiate an equitable adjustment as provided in the Changes clause of the subcontract.

(5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard or to follow consistently any cost accounting practice consistently and such failure results in any increased costs paid by the University or the Government. Such adjustment shall provide for recovery of the increased costs to the University or the Government together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P. L. 92-41, 85 Stat. 97, or seven percent per annum, whichever is less, from the time the payment by the University or the Government was made to the time the adjustment is effected.

(b) If the Government Contracting Officer or the University and the Subcontractor fail to agree whether the Subcontractor or a lower-tier subcontractor has complied with an applicable CAS, rule, or regulation of the CASB and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of the subcontract.

(c) The Subcontractor shall permit any authorized representatives of the DOE, the University, the CASB, or the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Subcontractor shall include the substance of this clause in all negotiated lower-tier subcontracts that the Subcontractor enters into and shall require such inclusion in all other lower-tier subcontracts, including the obligation to comply with all CAS in effect on the award date of the lower-tier subcontract or, if the lower-tier subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated lower-tier subcontracts exceeding \$100,000 where the price negotiated is not based on

(1) Established catalog or market prices of commercial items sold

in substantial quantities to the general public; or

(2) Prices set by law or regulation.

The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause by reason of Section 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)).

Note (1): New CAS shall apply to both national defense and nondefense CAS-covered subcontracts upon award of a new national defense CAS-covered subcontract containing the new Standard. The award of a new nondefense CAS-covered subcontract shall not trigger application of new CAS.

Note (2): Lower-tier subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a lower-tier subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Subcontractor the date of the Statement and the address of the ACO.

Note (3): In any case where a lower-tier subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the University, the Subcontractor, or higher-tier subcontractor, the Subcontractor may authorize direct submission of that lower-tier subcontractor's Disclosure Statement to the same Government offices to which the Subcontractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Subcontractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and because the subcontract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the CASB in connection with covered subcontracts, it is expected that the Subcontractor may wish to include a clause in each such lower-tier subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such a clause and the terms thereof are matters of negotiation and agreement between the Subcontractor and the lower-tier subcontractor, provided that they do not conflict with the duties of the Subcontractor under its subcontract with the University. It is also expected that any lower-tier subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the lower-tier subcontractor is a business unit that, pursuant to 4 CFR 332 is entitled to elect modified subcontract coverage and to follow Standards 401 and 402, the Disclosure and Consistency of Cost Accounting Practices clause shall be inserted instead of this clause.

Note (5): The terms defined in 4 CFR 331.20 shall have the same meanings herein. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Subcontractor or lower-tier subcontractor after receiving offers from at least two persons not associated with each other or with such Subcontractor or lower-tier subcontractor, provided that the solicitation to all competitors is identical, (2) price is the only consideration in selecting the lower-tier subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

B37, Administration of Cost Accounting Standards

To administer the Cost Accounting Standards (CAS) requirements under the subcontract, the Subcontractor shall take the steps outlined in paragraphs (a) through (f) below:

(a) Submit to the cognizant Contracting Officer or the University a description of any accounting change, the potential impact of the change on subcontracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change that displays the

potential shift of costs between CAS-covered subcontracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other Subcontractor business activity. As related to CAS-covered subcontracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with paragraphs (a)(3) and (a)(4)(i) of the CAS clause within 60 days (or such other date as may be mutually agreed to) after award of a subcontract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (a)(4)(iii) of the Cost Accounting Standards clause or with paragraph (a)(3) or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the Cost Accounting Standards clause or by paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Subcontractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer or the University within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) above. If the above proposal is not submitted within the specified time or any extension granted by the cognizant Contracting Office or the University, an amount not to exceed ten percent of each payment made after the date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant Contracting Officer or the University.

(c) Agree to appropriate subcontract and lower-tier subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the Cost Accounting Standards clause or with paragraphs (a)(3), (a)(4), or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause.

(d) For all lower-tier subcontracts subject either to the Cost Accounting Standards clause or to the Disclosure and Consistency of Cost Accounting Practices clause

(1) So state in the body of the lower-tier subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated lower-tier subcontracts. In addition, within 30 days after award of the lower-tier subcontract, submit the following information to the Subcontractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the lower-tier subcontractor's facility:

(i) Lower-tier subcontractor's name and lower-tier subcontract number;

(ii) Dollar amount and date of award;

(iii) Name of Subcontractor making the award; and

(iv) Any changes the lower-tier subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause, unless these

changes have already been reported. If award of the lower-tier subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify the University in writing of any adjustments required to lower-tier subcontracts under the subcontract and agree to an adjustment based on them to the subcontract's price or estimated cost and fee. This notice is due within 30 days after proposed lower-tier subcontract adjustments are received and shall include a proposal for adjusting the higher-tier subcontract or the subcontract appropriately.

(f) For lower-tier subcontracts containing the Cost Accounting Standards clause, require the lower-tier subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

B38, Disclosure and Consistency of Cost Accounting Practices

(a) In connection with the subcontract, the Subcontractor shall

(1) Comply with the requirements of 4 CFR Parts 401, Consistency in Estimating, Accumulating, and Reporting Costs, and 402, Consistency in Allocating Costs Incurred for the Same Purpose.

(2) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by regulations of the Cost Accounting Standards Board (CASB). If the Subcontractor has notified the Contracting Officer or the University that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the Government.

Note (1): Lower-tier subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a lower-tier subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Subcontractor the date of the Statement and the address of the ACO.

Note (2): In any case where a lower-tier subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Subcontractor or higher-tier subcontractor, the Subcontractor may authorize direct submission of the lower-tier subcontractor's Disclosure Statement to the same Government offices to which the Subcontractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Subcontractor of liability if it or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the University or the Government. In view of the foregoing and since the subcontract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the CASB in connection with covered lower-tier subcontracts, it is expected that the Subcontractor may wish to include a clause in each such subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Subcontractor and lower-tier subcontractor, provided that they do not conflict with the duties of the Subcontractor under its subcontract with the University. It is also expected that any lower-tier subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (3): The terms defined in 4 CFR 331.20 shall have the same meanings in this clause. As there defined, "negotiated subcontract" means

any lower-tier subcontract except a firm-fixed-price subcontract made by a Subcontractor or lower-tier subcontractor after receiving offers from at least two persons not associated with each other or such Subcontractor or lower-tier subcontractor, provided that (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the lower-tier subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

(3) (i) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by the Government Contracting Officer, the University, or the Subcontractor, and the Subcontractor agrees to negotiate with the Government Contracting Officer or the University the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to the subcontract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Subcontractor shall, when the Government Contracting Officer or the University and the Subcontractor agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in Section 332.51 of the CASB's regulations, negotiate an equitable adjustment as provided in the Changes clause of the subcontract. In the absence of the required finding, no agreement may be made under this subcontract clause that will increase costs paid by the University or the Government.

(4) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the University or the Government. Such adjustment shall provide for recovery of the increased costs to the University or the Government together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P.L. 92-41, 85 Stat. 97, or seven percent per annum, whichever is less, from the time the payment by the University or the Government was made to the time the adjustment is effected.

(b) If the Government Contracting Officer or the University and the Subcontractor fail to agree whether the Subcontractor has complied with an applicable CAS, rule, or regulation of the CASB and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute within the meaning of the Disputes clause of the subcontract.

(c) The Subcontractor shall permit any authorized representatives of the DOE, the University, the CASB, or the Comptroller General of the United States to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Subcontractor shall include in all negotiated lower-tier subcontracts that the Subcontractor enters into the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that

(1) If the lower-tier subcontract is awarded to a business unit that pursuant to Part 331 is required to follow all CAS, the Cost Accounting Standards clause shall be inserted instead of this clause; or

(2) This requirement shall apply only to negotiated lower-tier subcontracts exceeding \$100,000 where the price negotiated is not based on

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Prices set by law or regulation.

(3) The requirement shall not apply to negotiated lower-tier

subcontracts otherwise exempt from the requirement to include a Cost Accounting Standards clause by reason of Section 331.30(b) of the CASB's regulations.

B39, Termination for Convenience (Applies to Educational and Other Nonprofit Institutions)

(a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part if the University determines that a termination is in the University's or the Government's interest. The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and, except as directed by the University, the Subcontractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.

(3) Terminate all applicable lower-tier subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) As directed by the University, assign to the University all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; approval or ratification will be final for purposes of this clause.

(6) As directed by the University, transfer title (if not already transferred) and deliver to the University any information and items that, if the subcontract had been completed, would have been required to be furnished, including (i) goods produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.

(9) As directed or authorized by the University, use its best efforts to transfer or dispose of termination inventory other than that retained by the University under subparagraph (6) above, provided however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.

(c) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly but no later than one year from the effective date of termination unless extended in writing by the University upon written

request of the Subcontractor within this one-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, the University may determine, by information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel, provided that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The subcontract shall be amended and the Subcontractor paid the agreed amount.

(e) The cost principles and procedures in Subpart 31.3 of the FAR, in effect on the date of the subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, Cost Principles for Nonprofit Organizations, those cost principles shall apply, provided that if the Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR Subpart 31.2 for commercial organizations shall apply to such subcontractor.

(f) Under the terms and conditions it prescribes, the University may make partial payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(g) The Subcontractor has the right of appeal as provided under the Disputes clause of the subcontract, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (c) and failed to request a time extension, there is no right of appeal.

B40, Reporting of Royalties (Foreign)

(a) If the amount of the subcontract exceeds 25,000 United States dollars, the Subcontractor shall report in writing to the University while performing the subcontract the amount of royalties paid or to be paid by the Subcontractor directly to others in performing the subcontract. The Subcontractor shall also (1) furnish in writing any additional information relating to such royalties as may be requested by the University and (2) insert a provision similar to this clause in any lower-tier subcontract at any tier that involves an amount exceeding the equivalent of 25,000 United States dollars.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

B41, Classification

In the performance of the work under the subcontract, the Subcontractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and goods originated or generated under the subcontract in accordance with classification regulations and guidance furnished to the Subcontractor by the University. Every lower-tier subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or goods shall include a provision to the effect that in the performance of such subcontract or purchase order, the lower-tier subcontractor or supplier shall

ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and goods in accordance with classification regulations and guidance furnished to such lower-tier subcontractor or supplier by the Subcontractor.

B42, Limitation of Liability

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in the subcontract, the Subcontractor shall not be liable for loss of or damage to property of the University or the Government (including the goods delivered under the subcontract) that (1) occurs after University acceptance of the goods delivered under the subcontract and (2) results from any defects or deficiencies in the goods.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in or the University's acceptance of the goods results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of the subcontract.

(c) If the Subcontractor carries insurance or has established a reserve for self-insurance covering liability for loss or damage suffered by the University or the Government through the purchase or use of the goods required to be delivered under the subcontract and to the extent of such insurance or reserve, the Subcontractor shall be liable to the University or the Government for loss of or damage to property of the University or the Government occurring after University acceptance of and resulting from any defects or deficiencies in the goods delivered under the subcontract.

(d) The Subcontractor shall include this clause, including this paragraph (d) and supplemented as necessary to reflect the relationship of the contracting parties, in all lower-tier subcontracts.

B43, Limitation of Liability - High-Value Items

(This clause shall apply only to those items identified in the subcontract as being subject to this clause.)

(a) Notwithstanding any other provision of the subcontract and except as provided in paragraphs (b) through (e) below, the Subcontractor shall not be liable for loss of or damage to property of the University or the Government (including the goods delivered under the subcontract) that (1) occurs after University acceptance of the goods delivered under the subcontract and (2) results from any defects or deficiencies in the goods.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in or the University's acceptance of the goods results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of the subcontract.

(c) If the Subcontractor carries insurance or has established a reserve for self-insurance covering liability for loss or damage suffered by the University or the Government through the purchase or use of the goods required to be delivered under the subcontract and to the extent of such insurance or reserve, the Subcontractor shall be liable to the University or the Government for loss of or damage to property the University or the Government occurring after University acceptance of and resulting from any defects or deficiencies in the goods delivered under the subcontract.

(d) (1) This clause does not diminish the Subcontractor's obligations, to the extent that they arise otherwise under the subcontract, relating to correction, repair, replacement, or other relief for any defect or deficiency in the goods delivered under the subcontract.

(2) Unless this is a cost-reimbursement subcontract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the University, the Subcontractor shall, as determined by the University

(i) Pay the University the amount it would have cost the Subcontractor to make correction, repair, or replacement before the loss or damage occurred; or

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the University's rights under clauses, if included in this subcontract, that cover-

(1) Warranty of technical data;

(2) Ground and flight risks or aircraft flight risks; or

(3) Government property.

(f) In each lower-tier subcontract, except a lower-tier subcontract covered by paragraph (g) below, the Subcontractor shall insert the appropriate clause, supplemented as necessary to reflect the relationship of the contracting parties, as follows:

(1) In lower-tier subcontracts for high-value items only, after obtaining the Contract Administrator's advance written approval, insert this clause, including this paragraph (f).

(2) In lower-tier subcontracts for other end items only, insert the clause at FAR 52.246-23, Limitation of Liability.

(g) In any lower-tier subcontract for both high-value items for which this clause is appropriate, and other end items for which the preceding clause B43 is appropriate, after obtaining the University's advance written approval to use this clause, the Subcontractor shall (1) include both clauses, (2) identify high-value items by line item, and (3) insert the following preamble before paragraph (a) of this clause as used in that lower-tier subcontract:

(This clause shall apply only to those items identified in this subcontract as being subject to this clause.)

B44, Limitation of Liability - Services

(a) Except as provided in paragraphs (b) and (c) below and except to the

extent that the Subcontractor is expressly responsible under the subcontract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Subcontractor shall not be liable for loss of or damage to property of the University or the Government that (1) occurs after University acceptance of services performed under the subcontract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in or the University's acceptance of services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of the subcontract.

(c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the University or the Government through the Subcontractor's performance of services or furnishing of materials under the subcontract, the Subcontractor shall be liable to the University or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the University or the Government occurring after University acceptance of, and resulting from any defects or deficiencies in services performed or materials furnished under the subcontract.

(d) The Subcontractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all lower-tier subcontracts over \$25,000.

B45, Disclosure of Information

(a) It is mutually expected that the activities under the subcontract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes before the expiration or termination of all activities arising under the subcontract, that the party shall notify the other party accordingly in writing without delay. In any event, the Subcontractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE and shall promptly inform the University in writing if and when classified information becomes involved or, in the mutual judgment of the parties, it appears likely that classified information or material may become involved. In such event, the Subcontractor shall have the right to terminate performance of the work under the subcontract, and the provisions of the subcontract regarding termination for the convenience of the University shall apply.

(b) The Subcontractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy. The term shall not include data declassified or removed from the Restricted Data category pursuant to Section

142 of the Atomic Energy Act of 1954, as amended.

B46, Sensitive Foreign Nations Controls

(a) In connection with any activities in the performance of the subcontract, the Subcontractor agrees to comply with the requirements of Sensitive Foreign Nations Controls attached to the subcontract and relating to those countries that may from time to time be identified to the Subcontractor by written notice as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under the subcontract upon at least 60 days' prior written notice to the University if the Subcontractor determines that it is unable, without substantially interfering with its policies or without adversely affecting its performance, to continue performance of the work under the subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of the subcontract regarding termination for convenience shall apply.

(b) The provisions of this clause shall be included in any lower-tier subcontracts.

B47, Inspection of Research and Development (Short Form)

The University has the right to inspect and evaluate the work performed or being performed under the subcontract and the premises where the work is being performed at all reasonable times and in a manner that will not unduly delay the work. If the University performs inspection or evaluation on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these tasks.

B48, Nuclear Indemnification. The contractor represents that there is included in its prime contract with DOE an indemnity agreement, entered into by DOE under the authority of Section 270 of the Atomic Energy Act of 1954, as amended by Public Law 85-256 (the "Price-Anderson Act), a copy of which may be obtained from the contractor (or is attached hereto); that, under said agreement, DOE has agreed to indemnify the contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (1) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant or facilities); or (2) arise out of or in the course of transportation of source, special nuclear or nuclear by-product materials to or from a "contract location;" or (3) involve items produced or delivered under the prime contract. The obligation of DOE to indemnify is subject to the conditions stated in the indemnity agreement.

SECTION C

CLAUSES FOR FIXED-PRICE TYPE SUBCONTRACTS

The clauses listed below apply to fixed-price type subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of the clause number in the Schedule.

Clause Number	Title	Page
C1	Federal, State, and Local Taxes	C-1
C2	Taxes - Foreign Fixed-Price Subcontracts	C-1
C3	Payment Under Fixed-Price Research and	

	Development Subcontracts	C-3
C4	Limitation on Withholding of Payments	C-3
C5	Limitation of University's Obligation	C-4
C6	Lower-Tier Subcontracts	C-5
C7	Additional Paragraph (i) to Clause C6, Lower-Tier Subcontracts	C-7
C8	Changes	C-7
C9	Property	C-8
C10	Inspection of Research and Development	C-14
C11	Default	C-15
C12	Termination for Convenience	C-17
C13	Stop-Work Order	C-20
C14	Refund of Royalties	C-21

C1, Federal, State, and Local Taxes

(a) The subcontract price includes all applicable federal, state, and local taxes and duties except the tax that may be reimbursed pursuant to paragraph (b) of this clause.

(b) The Subcontractor may be reimbursed for gross receipts taxes imposed by the New Mexico Gross Receipts and Compensating Tax Act (the Act) upon the subcontract, subject to the provisions set forth in this clause. To be reimbursed, the Subcontractor must submit an invoice for the subcontract, which must be for "services," "lease or rental of tangible personal property," or "construction" as those terms are defined in the Act. The invoice(s) for the subcontract must separately state the amount of gross receipts tax to be reimbursed. Failure to invoice for gross receipts tax in accordance with this clause at the time established for invoicing under the subcontract shall be deemed a waiver by the Subcontractor of such reimbursement.

(c) The University is authorized to issue nontaxable transaction certificates (NTTCs) to enable the Subcontractor to exclude from gross receipts the price of a subcontract or an order for the "purchase" of "tangible personal property" as those terms are defined in the Act. If the subcontract is for the purchase of tangible personal property, the University reserves the right to issue an NTTC instead of reimbursing gross receipts taxes otherwise imposed on the subcontract. Further, the subcontractor agrees to refund any gross receipts tax reimbursed by the University under the subcontract if the tax relates to the purchase of tangible personal property.

(d) Improper Use of a University-Issued NTTC. If the Subcontractor uses a University-issued NTTC for a purpose not authorized under the Act (e.g., to exclude the price of an order for "services," "lease or rental of tangible personal property," or "construction" as those terms are defined in the Act, whether received under the subcontract or any other subcontract with the University), such improper use shall be deemed a waiver by the Subcontractor of reimbursement for gross receipts taxes for any subcontract affected by such improper use.

C2, Taxes - Foreign Fixed-Price Subcontracts

(a) To the extent that the subcontract provides for furnishing goods or for performing services outside the United States, its possessions, and Puerto Rico, this clause applies instead of any Federal, State, and local taxes clause of the subcontract.

(b) Definitions.

"Subcontract date" as used in this clause means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of the subcontract or modification.

"Country concerned" as used in this clause means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under the subcontract are made.

"Tax" and "taxes" as used in this clause include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivision.

"All applicable taxes and duties" as used in this clause means all taxes and duties, in effect on the date of the subcontract, that the taxing authority is imposing and collecting on the transactions or property covered by the subcontract pursuant to written ruling or regulation.

"After-imposed tax" as used in this clause means any new or increased tax or duty, or any tax, other than excepted tax, that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period on the transactions or property covered by the subcontract and that the Subcontractor must pay or bear because of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax" as used in this clause means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by the subcontract but which the Subcontractor is not required to pay or bear or for which the Subcontractor obtains a refund because of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax" as used in this clause means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed goods covered by the subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which vests in the U.S. Government.

(c) Unless otherwise provided in the subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not apply to expenditures in such country by or on behalf of the United States Government.

(d) The subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of the subcontract that the Subcontractor must pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the University or the United States Government or to comply with the provisions of paragraph (i) below.

(e) The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The University shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by the University for such taxes. The University shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by the University.

(f) The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and that the Subcontractor must pay or bear or does not obtain a refund of through the Subcontractor's fault, negligence, or failure to follow instructions of the University or the United States Government or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$100.

(h) If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to the University as the University directs.

(i) The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the University, the Subcontractor, any lower-tier subcontractor, or the transactions or property covered by the subcontract are exempt under the laws of the country concerned or its political subdivisions or that the governments of the United States and of the country concerned have agreed shall not apply to expenditures in such country by or on behalf of the United States Government.

(j) The Subcontractor shall promptly notify the University of all

matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the University directs. At the direction of the University, the subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor, including any interest, penalty, and reasonable attorneys' fees.

C3, Payment Under Fixed-Price Research and Development Subcontracts

The University shall pay the Subcontractor the prices stipulated in the subcontract for work delivered or rendered and accepted, less any deductions provided in the subcontract, after submission of proper invoices or vouchers. Unless otherwise specified, payment shall be made after acceptance of any portion of the work delivered or rendered for which a price is separately stated in the subcontract.

C4, Limitation on Withholding of Payments

If more than one clause or schedule provision of the subcontract authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for goods delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or schedule provision at that time, provided that this limitation shall not apply to

- (1) Withholdings pursuant to any clause relating to wages or hours of employees;
- (2) Withholdings not specifically provided for by the subcontract;
- (3) The recovery of overpayments; and
- (4) Any other withholding mandated by law or regulation.

C5, Limitation of University's Obligation

(a) Of the total price of the items listed in Section B of the schedule, the sum listed in Section B of the schedule is presently available for payment and allotted to the subcontract. It is anticipated that from time to time additional funds will be allotted to the subcontract until the total price of these items is allotted.

(b) The Subcontractor agrees to perform or have performed work on the items up to the point at which, in the event of termination of the subcontract pursuant to the Termination for Convenience clause of the subcontract, the total amount payable by the University (including amounts payable in respect of lower-tier subcontracts and settlement costs) pursuant to paragraph (a) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount of the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point. The University will not be obligated in any event to pay or reimburse the Subcontractor in excess of the amount from time to time allotted to the subcontract, regardless of anything to the contrary in the Termination for Convenience clause of the subcontract.

(c) It is contemplated that the funds presently allotted to the subcontract will cover the work to be performed, as limited by the provisions of (b) above, until the date specified in Section B of the subcontract. If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until the above date, the Subcontractor will notify the University in writing when, within the next 30 days, the work will reach a point at which, in the event of termination of the subcontract pursuant to the Termination for Convenience clause of the subcontract, the total amount payable by the University (including amount payable in respect of lower-tier

subcontracts and settlement costs), pursuant to paragraph (e) of this clause, will approximate 85 percent of the total amount then allotted to the subcontract. The notice will state (i) the estimated date when that point will be reached, and (ii) the estimated amount of additional funds required to continue performance to the above date. After such latter notification, the Subcontractor shall advise the University in writing as to the estimated amount of additional funds which will be required for the timely performance of the subcontract for a further period as may be specified in the subcontract or otherwise agreed to by the parties. If additional funds are not allotted by the date above written, the University will, upon written request of the Subcontractor, terminate the subcontract on that date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination for Convenience clause of the subcontract.

(d) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will agree as to the applicable period of subcontract performance that will be covered by the funds. The provisions of (b) and (c) above will apply in like manner to the additional allotted funds, and the subcontract will be amended accordingly.

(e) If the Subcontractor incurs additional costs or is delayed in the performance of the work under the subcontract solely by reason of failure of the University to allot additional funds in amounts sufficient for timely performance of the subcontract, and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items or in the time of delivery or both. Failure to agree to any such equitable adjustment hereunder will be a dispute within the meaning of the Disputes clause.

(f) The University may at any time before termination and, with the consent of the Subcontractor after notice of termination, allot additional funds for the subcontract.

(g) The provisions of this clause with respect to termination will not be deemed to limit the rights of the University under the Default clause. The provisions of this clause are limited to the work on and obligation of funds for the items set forth in (a) above. This clause will become inoperative upon the obligation of funds for the total price of the work except for rights and obligations then existing under this clause.

(h) Nothing in the clause affects the right of the University to terminate this subcontract pursuant to the Termination for Convenience clause.

C6, Lower-Tier Subcontracts

(a) This clause does not apply to firm fixed-price subcontracts and to fixed-price subcontracts with economic price adjustment. However, it does apply to lower-tier subcontracts resulting from unpriced modifications to such subcontracts.

(b) "Lower-tier subcontract" as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. The Subcontractor shall notify the University reasonably in advance of entering into any lower-tier subcontract if the Subcontractor does not have a Government approved purchasing system and if the lower-tier subcontract

(1) Is to be a cost-reimbursement, time-and-material, or labor-hour subcontract estimated to exceed \$25,000, including any fee; or

(2) Is proposed to exceed \$100,000; or

(3) Is one of a number of lower-tier subcontracts with a single lower-tier subcontractor under the subcontract for the same or related goods

or services that in the aggregate are expected to exceed \$100,000.

(c) The advance notification required by paragraph (b) above shall include

(1) A description of the goods or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained;

(4) The proposed price of the lower-tier subcontract and the Subcontractor's cost or price analysis;

(5) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other provisions of the subcontract;

(6) The lower-tier subcontractor's Disclosure Statement or certificate relating to Cost Accounting Standards when such data are required by other provisions of the subcontract; and

(7) A negotiation memorandum reflecting

(i) The principal elements concerning price negotiations of the lower-tier subcontract;

(ii) The most significant considerations controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(d) The Subcontractor shall obtain the University's written consent before placing any lower-tier subcontract for which advance notification is required under paragraph (b) above. However, the University may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of the University.

(e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain the University's written consent before placing lower-tier subcontracts that have been selected for special surveillance and so identified in the schedule of the subcontract.

(f) Unless the consent or approval is specifically provided otherwise,

neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any lower-tier subcontract terms or conditions, (2) of the acceptability of any lower-tier subcontract price or of any amount paid under any lower-tier subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.

(g) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.

(h) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3. and DEAR 944.3

C7, Additional Paragraph (i) to Clause C6, Lower-Tier Subcontracts

(i) Paragraphs (b) and (c) of Clause C6 do not apply to the lower-tier subcontracts that were evaluated during negotiations and are listed in the schedule.

C8, Changes

(a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following;

- (1) Drawings, designs, or specifications;
- (2) Method of shipment or packing; or
- (3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of an item required for performing the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance, or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.

(c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.

(d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C9, Property

(a) Government Property.

(1) The University shall furnish to the Subcontractor for use in connection with and under the terms of the subcontract, Government-owned property (hereafter referred to as "Government property") described in the schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property.

(2) The delivery or performance dates for the subcontract are based upon the expectation that Government property suitable for use (except for property furnished "as is") will be delivered to the Subcontractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the delivery or performance dates of the subcontract.

(3) If Government property is received by the Subcontractor in a condition not suitable for the intended use, upon receipt of it, the Subcontractor shall notify the University, detailing the facts and, as directed by the University and at University expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the University shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government property is not delivered to the Subcontractor by the required time, the University shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government Property.

(1) The University may, by written notice (i) decrease the Government property provided or to be provided under the subcontract, or (ii) substitute other Government property for the property to be provided by the University or to be acquired by the Subcontractor for the Government under the subcontract. The Subcontractor shall promptly take such action as the University may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Subcontractor's written request, the University shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause if the University has agreed in the schedule to make the property available for performing the subcontract and there is any

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contractual or lease agreement.

(c) Title in Government Property.

(1) The Government shall retain title to all Government property.

(2) All Government property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the University or the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor for the University under the subcontract shall pass to and vest in the Government when its use in performing the subcontract commences or when the University has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If the subcontract contains a provision directing the Subcontractor to purchase goods for which the University will reimburse the Subcontractor as a direct item of cost under the subcontract

(i) Title to goods purchased shall pass to and vest in the

Government upon delivery of such goods; and

(ii) Title to all other goods shall pass to and vest in the Government upon

(A) Issuance of the goods for use in subcontract performance;

(B) Commencement of processing of the goods or its use in subcontract performance; or

(C) Reimbursement of the cost of the goods by the University, whichever occurs first.

(d) Use of Government Property. Government property shall be used only for performing the subcontract, unless otherwise provided in the schedule or approved by the University.

(e) Property Administration.

(1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with FAR Subpart 45.5 and DEAR 945.5, as in effect on the date of the subcontract.

(2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and applicable provisions of Subpart 45.5 of the FAR and DEAR Subpart 945.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the University or the Government under the subcontract, the University shall replace the items or the Subcontractor shall make such repairs as the University directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the University. When any property for which the University is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Subcontractor represents that the subcontract price does not include any amount for repairs or replacement for which the University is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.

(f) Access. The University and the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited Risk of Loss.

(1) The term "Subcontractor's managerial personnel" as used in this paragraph (g) means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(i) All or substantially all of the Subcontractor's business;

(ii) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or

(iii) A separate and complete major industrial operation connected with performing the subcontract.

(2) The Subcontractor shall not be liable for loss or destruction of or damage to the Government property provided under the subcontract (or,

if an education or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in paragraphs (3) and (4) below.

(3) The Subcontractor shall be responsible for loss or destruction of or damage to the Government property provided under the subcontract, including expenses incidental to such loss, destruction, or damage

(i) That results from a risk expressly required to be insured under the subcontract but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed but only to the extent of such insurance or reimbursement;

(iii) For which the Subcontractor is otherwise responsible under the express terms of the subcontract;

(iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or

(v) That results from the Subcontractor's failure because of willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of University-furnished Government property as required by paragraph (e) of this clause.

(4) (i) If the Subcontractor fails to act as provided in paragraph (g)(3)(v) above and after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the University's or the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.

(ii) In such event, any loss or destruction of or damage to the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage

(A) Did not result from the Subcontractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Subcontractor.

(5) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of or damage to the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the University, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use according to the provisions of the subcontract.

(6) Upon loss or destruction of or damage to Government property provided under the subcontract, the Subcontractor shall so notify the University and shall communicate with the loss and salvage organization, if

any, designated by the University. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the University a statement of

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the University directs. If the Government property is destroyed or damaged beyond practical repair or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the University, sell such property for the account of the University. Such sales may be made in order to minimize the loss to the University and the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this paragraph (g)(7) in accordance with paragraph (h) of this clause. However, the University or the Government may directly reimburse the loss and salvage organization for any of their charges. The University shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Subcontractor represents that it is not including in the price and agrees it will not hereafter include in any price for the subcontract any charge or reserve for insurance (including any self-insurance fund or reserve) covering risk of loss or destruction of or damage to Government property, except to the extent that the University may have expressly required the Subcontractor to carry such insurance under another provision of the subcontract.

(9) If the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of or damage to Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the University, as directed by the University.

(10) The Subcontractor shall do nothing to prejudice the University's or the Government's rights to recover against third parties for any loss or destruction of or damage to Government property. Upon the request of the University and at the University's or the Government's expense, the Subcontractor shall furnish to the University or the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the University or the Government) in obtaining recovery. In addition, when a lower-tier subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Subcontractor shall enforce for the benefit of the University or the Government the liability of the lower-tier subcontractor for such loss, destruction, or damage.

(h) Equitable Adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the University may initiate an equitable adjustment in favor of the University or the Government. The right to an equitable adjustment shall be the

Subcontractor's exclusive remedy. Neither the University nor the Government shall be liable to suit for breach of contract for

(1) Any delay in delivery of Government property;

(2) Delivery of Government property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government property; or

(4) Failure to repair or replace property for which the University is responsible.

(i) Final Accounting and Disposition of Government Property. Upon completing the subcontract, or at such earlier dates as may be fixed by the University, the Subcontractor shall submit, in a form acceptable to the University, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing the subcontract or delivered to the University. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the University. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to the University as the University directs.

(j) Abandonment and Restoration of Subcontractor's Premises. Unless otherwise provided herein, the University and the Government

(1) May abandon any Government property in place, at which time all obligations of the University or the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government property (listed in the schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

C10, Inspection of Research and Development

(a) The Subcontractor shall provide and maintain an inspection system covering the work under the subcontract and that is acceptable to the University. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.

(b) The University has the right to inspect and test all work called for by the subcontract to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The University may also inspect the premises of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the University performs any inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish without additional charge all reasonable facilities and assistance for the safe and

convenient performance of these duties. Except as otherwise provided in the subcontract, the University shall bear the expense of University inspections or tests made at other than the Subcontractor's or lower-tier subcontractor's premises.

(d) The University shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the subcontract. University failure to inspect and accept or reject the work shall not relieve the Subcontractor from responsibility nor impose liability on the University for nonconforming work. Work is nonconforming when it is defective in material or workmanship or does not otherwise conform with subcontract requirements.

(e) The University has the right to reject nonconforming work. If the Subcontractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time that the University may authorize), the University may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute under the Disputes clause.

(f) Inspection and test by the University does not relieve the Subcontractor from responsibility for defects or other failures to meet the subcontract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the subcontract. If acceptance is not conclusive for any of these causes and in addition to any other rights and remedies provided by law or under other provisions of the subcontract, the University shall have the right to require the Subcontractor (1) at no increase in subcontract price, to correct or replace the defective or nonconforming goods at the original point of delivery or at the Subcontractor's facility at the University's election, and in accordance with a reasonable delivery schedule that may be agreed upon between the Subcontractor and the University, provided the University may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule; or (2) within a reasonable time after the Subcontractor's receipt of notice of defects or nonconformance, to repay such portion of the subcontract price that is equitable under the circumstances if the University elects not to require correction or replacement. When goods are returned to the Subcontractor, the Subcontractor shall bear transportation costs from the original point of delivery to the Subcontractor's facility and return to the original point of delivery when that point is not the Subcontractor's facility.

C11, Default

(a) (1) Subject to paragraphs (c) and (d) below, by written Notice of Default to the Subcontractor, the University may terminate the subcontract in whole or in part if the Subcontractor fails to

(i) Perform the work under the subcontract within the time specified in the subcontract or any extension;

(ii) Prosecute the work so as to endanger performance of the subcontract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of the subcontract (but see subparagraph [a][2] below).

(2) The University's right to terminate the subcontract under paragraphs (1)(ii) and (1)(iii) above may be exercised if the Subcontractor does not cure such failure within ten days (or more, if authorized in writing by the University) after receipt of the notice from the University specifying the failure.

(b) If the University terminates the subcontract in whole or in part, it may acquire, under the terms and in the manner the University considers appropriate, work similar to the work terminated, and the

Subcontractor will be liable to the University for any excess costs for the similar work. However, the Subcontractor shall continue the work not terminated.

(c) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.

(d) If the failure to perform is caused by the default of a lower-tier subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule or other performance requirements.

(e) If the subcontract is terminated for default, the University may require the Subcontractor to transfer title to the Government and deliver to the University, as directed by the University, any (1) completed or partially completed work not previously delivered to and accepted by the University and (2) other property, including subcontract rights, specifically produced or acquired for the terminated portion of the subcontract. Upon direction of the University, the Subcontractor shall also protect and preserve property in its possession in which the University has an interest.

(f) The University shall pay the subcontract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Subcontractor and the University for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The University may withhold from these amounts any sum that the University determines to be necessary to protect the University against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Subcontractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the University.

(h) The rights and remedies of the University in this clause are in addition to any other rights and remedies provided by law or under the subcontract.

C12, Termination for Convenience

(a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part if the University determines that a termination is in the Government's interest. The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.

(2) Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause) for goods, services, or facilities, except as necessary to complete the continued portion of the subcontract.

(3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.

(4) Assign to the University, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the University, transfer title to the Government and deliver to the University (i) the fabricated or unfabricated parts, work in process, completed work, and other goods produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the University may direct, for the protection and preservation of the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in subparagraph (6) above, provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.

(c) After expiration of the "plant clearance period" (see FAR Subpart 45.6) the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 90 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and

shall pay the amount determined.

(e) Subject to paragraph (d) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total subcontract price as reduced by (1) the amount of payments previously made and (2) the subcontract price of work not terminated. The subcontract shall be amended and the Subcontractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Subcontractor and the University fail to agree on the whole amount to be paid because of the termination of work, the University shall pay the Subcontractor the amounts determined by the University as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The subcontract price for completed goods or services accepted by the University (or sold or acquired under subparagraph [(b)][(9)] above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to goods or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (i) above; and

(iii) A sum, as profit on subparagraph (i) above, determined by the University under Section 49.202 of the FAR to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the University shall allow no profit under the subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of termination inventory.

(g) Except for normal spoilage, and except to the extent that the University or the Government expressly assumed the risk of loss, the University shall exclude from the amounts payable to the Subcontractor under paragraph (f) above the fair value, as determined by the University, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a purchaser.

(h) The costs principles and procedures of Part 31 of the FAR shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the University under paragraph (d),

(f), or (k) except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (d), (f), or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Subcontractor under this clause, there shall be deducted

(1) All unliquidated payments to the Subcontractor under the terminated portion of the subcontract;

(2) Any claim that the University has against the Subcontractor under the subcontract; and

(3) The agreed price for or the proceeds of sale of goods or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to the University.

(k) If the termination is partial, the Subcontractor may file a proposal with the University for an equitable adjustment of the price(s) of the continued portion of the subcontract. The University shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the University.

(1) (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215 (b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition or a later date determined by the University because of the circumstances.

(m) Unless otherwise provided in the subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of the subcontract for three years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under the subcontract. The Subcontractor shall make these records and documents available to the University or the Government at the Subcontractor's office at all reasonable times and without any direct charge. If approved by the University, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

C13, Stop-Work Order

(a) The University may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor, and for any further period to which

the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either

(1) Cancel the stop-work order or

(2) Terminate the work covered by the stop-work order as provided in the Default or the Termination for Convenience clause of the subcontract.

(b) If a stop-work order issued under this clause is cancelled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price or both and the subcontract shall be modified, in writing, accordingly, if

(1) The stop-work order results in an increase in time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and

(2) The Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim asserted at any time before final payment under the subcontract.

(c) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not cancelled and the work covered by the stop-work order is terminated for default, the University shall allow, by equitable adjustment or other means, reasonable costs resulting from the stop-work order.

C14, Refund of Royalties

(a) The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both and such amounts have been reported to the University.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing the subcontract or any lower-tier subcontract hereunder.

(c) Before final payment under the subcontract, the Subcontractor shall furnish to the University, a statement of royalties paid or required to be paid in connection with performing the subcontract and lower-tier subcontracts hereunder together with the reasons.

(d) The Subcontractor will be compensated for royalties reported under paragraph (c) above only to the extent that such royalties were included in the subcontract price and are determined by the University to be properly chargeable to the University and allocable to the subcontract. The subcontract price shall be reduced to the extent that any royalties that are included in the subcontract price are not in fact paid by the Subcontractor or are determined by the University not to be properly chargeable to the University and allocable to the subcontract. Repayment or credit to the University shall be made as the University directs.

(e) If, at any time within three years after final payment under the subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (d) above, the Subcontractor shall promptly notify the University of that fact and shall reimburse the University in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any lower-tier subcontract in which the amount of royalties reported during negotiation of the lower-tier subcontract exceeds \$250.

SECTION D

CLAUSES FOR COST REIMBURSEMENT TYPE SUBCONTRACTS

The clauses listed below apply to cost reimbursement type subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of clause numbers in the Schedule.

Clause Number	Title	Page
D1	Allowable Cost and Payment	D-1
D2	Modification of Clause D1, Allowable Cost and Payment for Educational Institutions	D-4
D3	Modification of Clause D1, Allowable Cost and Payment for Nonprofit Organizations	D-4
D4	Fixed Fee	D-4
D5	Incentive Fee	D-4
D6	Cost or Cost-Sharing Subcontract - No Fee	D-6
D7	Withholding of Payments - No Fee	D-7
D8	Limitation of Cost	D-7
D9	Limitation of Funds	D-8
D10	Notice of Intent to Disallow Costs	D-10
D11	Lower-Tier Subcontracts	D-10
D12	Inspection of Research and Development	D-13
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D14	Changes	D-15
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D17	Termination	D-23
D18	Stop-Work Order	D-27
D19	Excusable Delays	D-28
D20	Payment for Overtime Premiums	D-29

D1, Allowable Cost and Payment

(a) Invoicing. The University shall make payments to the Subcontractor when requested as work progresses but (except for small business concerns) not more often than once every two weeks and in amounts determined to be allowable by the University in accordance with Subpart 31.2 of the FAR as supplemented by Subpart 931.2 of the DEAR and the terms of the subcontract. In such form and reasonable detail as the University may require, the Subcontractor may submit to the University an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only

(i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for goods or services purchased directly for the subcontract;

(ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for

(A) Goods issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for obtaining reimbursement under Government contracts and University subcontracts; and

(iii) The amount of progress, payments that have been paid to the Subcontractor's lower-tier subcontractors under similar cost standards.

(2) Subcontractor contributions to any pension, profit-sharing, or funds for a plan for ownership of stock by employees that are paid quarterly or more often may be included in indirect costs for payment purposes, provided that the Subcontractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect cost for payment purposes until the Subcontractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statement in specifications or other documents incorporated in this subcontract by reference and designating performance of services or furnishing of goods at the Subcontractor's expense or at no cost to the University shall be disregarded for reimbursement of costs under this clause.

(c) Small Business Concerns. A small business concern may be paid more often than every two weeks and may invoice and be paid for recorded costs for

goods or services purchased directly for the subcontract, even though the small business concern has not yet paid for those goods or services.

(d) Final Indirect Cost Rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR for the period covered by the indirect cost rate proposal.

(2) Within 90 days after the expiration of each of its fiscal years or by a later date approved by the University, the Subcontractor shall submit to the University and the cognizant Government Contracting Officer responsible for negotiating its final indirect cost rates and to the cognizant audit activity (1) the rates of the proposed final indirect cost for that period and (2) supporting cost data specifying the subcontract to which the rates apply. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The University, the Government Contracting Officer, and the Subcontractor shall establish the final indirect cost rates as promptly as practicable after receipt of the Subcontractor's proposal.

(3) The Subcontractor and the University or the Government Contracting Officer shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected subcontract and/or lower-tier subcontract and shall identify any with advance agreements or special terms and the applicable rate. The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into the subcontract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause of the subcontract.

(e) Billing Rates. Until final, annual indirect cost rates are established for any period, the University shall reimburse the Subcontractor at billing rates established by the University or by the cognizant auditor and are subject to adjustment when the final rates are established. These billing rates

(1) Shall be the anticipated final rates; and

(2) At either party's request, may be prospectively or retroactively revised by mutual agreement to prevent substantial overpayment or underpayment.

(f) Audit. At any time or times before final payment, the University may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the University not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) Final Payment.

(1) The Subcontractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work but no later than one year from the completion date. Upon approval of that invoice or voucher and upon the Subcontractor's compliance with all terms of the subcontract, the University shall promptly pay any balance of allowable costs and that part of the fee, if any, not previously paid.

(2) The Subcontractor shall pay to the University any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under the subcontract to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by the University. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the University. Before final payment under the subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver

(i) An assignment to the University, in form and substance satisfactory to the University, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by the University under this subcontract; and

(ii) A release discharging the University, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, except

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims, including reasonable incidental expenses, based upon liabilities of the Subcontractor to third parties arising out of the performance of the subcontract, provided that the claims are not known to the Subcontractor on the date of the execution of the release and that the Subcontractor gives notice of the claims in writing to the University within six years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of the subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of the University and the Government against patent liability.

D2, Modification of Clause D1, Allowable Cost and Payment for Educational Institutions

Substitute paragraph (a) below in place of paragraph (a) of clause D1.

(a) Invoicing. The University shall make payments to the Subcontractor when requested as work progresses but not more often than once every two weeks and in amounts determined to be allowable by the University in accordance with Subpart 31.3 of the FAR and the terms of the subcontract. The Subcontractor may submit to the University in such form and reasonable detail as the University may require an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract.

D3, Modification of Clause D1, Allowable Cost and Payment For Nonprofit Organizations Other Than Educational Institutions

Substitute paragraph (a) below in place of paragraph (a) of clause D1.

(a) Invoicing. The University shall make payments to the Subcontractor when requested as work progresses, but not more often than once every two weeks and in amounts determined to be allowable by the University in accordance with Subpart 31.7 of the FAR and the terms of the subcontract. The Subcontractor may submit to the University in such form and reasonable detail as the University may require an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract.

D4, Fixed Fee

(a) The University shall pay the Subcontractor for performing this subcontract the fixed fee specified in the schedule.

(b) Payment of the fixed fee shall be made as specified in the schedule, provided that after payment of 85 percent of the fixed fee, the University may withhold further payment of fee until a reserve is set aside in an amount that the University considers necessary to protect the University's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

D5, Incentive Fee

(a) General. The University shall pay the Subcontractor for performing the subcontract a fee determined as provided in the subcontract.

(b) Target Cost and Target Fee. The target cost and target fee specified in the schedule are subject to adjustment if the subcontract is modified in accordance with paragraph (d) below. (1) "Target cost" as used in the subcontract means the estimated cost of this subcontract as initially negotiated, adjusted in accordance with paragraph (d) below. (2) "Target fee" as used in the subcontract means the fee initially negotiated on the assumption that this subcontract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) Withholding of Payment. Normally, the University shall pay the fee to the Subcontractor as specified in the schedule. However, when the University considers that performance or cost indicates that the Subcontractor will not achieve the target cost, the University shall pay on the basis of an appropriate lesser fee. When the Subcontractor demonstrates that performance or cost clearly indicates that the Subcontractor will earn a fee significantly above the target fee, the University may, at its sole discretion, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the University may withhold further payment of fee until a reserve is set aside in an amount that the University considers necessary to protect the University's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less.

(d) Equitable Adjustments. When the work under the subcontract is increased or decreased by a modification to the subcontract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to the subcontract.

(e) Fee Payable.

(1) The fee payable under the subcontract shall be the target fee increased by ____*____ cents for every dollar that the total allowable cost is less than the target cost or decreased by ____*____ cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than ____*____ percent or less than ____*____ percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased because of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (g)(2) of the Allowable

Cost and Payment clause.

(3) If the subcontract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of the subcontract.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Subcontractor or any lower-tier subcontractor.

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Subcontractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Subcontractor's involvement in litigation as required by the University pursuant to a clause of the subcontract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the University, or claims for reimbursement for liabilities to third persons pursuant to the Work on University or Government Premises clause, if made a part of the subcontract.

(v) Any claim, loss, or damage resulting from a risk for which the Subcontractor has been relieved of liability by the Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the subcontract as unusually hazardous or defined as a nuclear risk and against which the University has expressly agreed to indemnify the Subcontractor.

(5) All other allowable costs are included in total allowable cost for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided for in the subcontract.

(f) Subcontract Modification. The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to the subcontract signed by the Subcontractor and the University.

(g) Inconsistencies. If any inconsistencies in language between this clause and provisioning documents or University options under the subcontract exist, compensation for spare parts or other goods and services ordered under such documents shall be determined in accordance with this clause.

* The amounts to be entered in the blank spaces will be identified in the schedule when this clause is used.

D6, Cost or Cost-Sharing Subcontract - No Fee

The University shall not pay the Subcontractor a fee for performing the subcontract.

D7, Withholding of Payments - No Fee

After payment of 80 percent of the total estimated cost shown in the Schedule, the University may withhold further payment of allowable cost until a reserve is set aside in an amount that the University considers necessary to protect its interest. This reserve shall not exceed one percent of the total estimated cost shown in the schedule or \$100,000, whichever is less.

D8, Limitation of Cost

(a) The parties estimate that performance of the subcontract, exclusive of any fee, will not cost the University more than (1) the estimated cost specified in the schedule or, (2) if this is a cost-sharing subcontract, the University's share of the estimated cost specified in the schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this subcontract within the estimated cost that, if the subcontract is a cost-sharing subcontract, includes both the University's and the Subcontractor's share of the cost.

(b) The Subcontractor shall notify the University in writing whenever it has reason to believe that

(1) The costs the Subcontractor expects to incur under the subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the schedule; or

(2) The total cost for the performance of the subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Subcontractor shall provide the University a revised estimate of the total cost of performing the subcontract.

(d) Except as required by other provisions of the subcontract, specifically citing and stated to be an exception to this clause

(1) The University is not obligated to reimburse the Subcontractor for costs incurred in excess of (i) the estimated cost specified in the schedule or, (ii) if this is a cost-sharing subcontract, the estimated cost to the University specified in the schedule; and

(2) The Subcontractor is not obligated to continue performance under the subcontract (including actions under the Termination clause) or otherwise incur costs in excess of the estimated cost specified in the schedule, until the University (i) notifies the Subcontractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing the subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the schedule.

(e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) above or from any person other than the Contract Administrator shall affect the subcontract's estimated cost to the University. In the absence of the specified notice, the University is not obligated to reimburse the Subcontractor for any costs exceeding the estimated cost or, if the subcontract is a cost-sharing subcontract, for any costs exceeding the estimated cost to the University specified in the schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.

(f) If the estimated cost specified in the schedule is increased, any costs the Subcontractor incurs before the increase that exceed the previously estimated cost shall be allowable to the same extent as if incurred

afterward, unless the University issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the University specified in the schedule unless they contain a statement increasing the estimated cost.

(h) If the subcontract is terminated or if the estimated cost is not increased, the University and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract based upon the share of costs incurred by each.

D9, Limitation of Funds

(a) The parties estimate that performance of the subcontract will not cost the University more than (1) the estimated cost specified in the schedule or, (2) if this is a cost-sharing subcontract, the University's share of the estimated cost specified in the schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under the subcontract within the estimated cost that if the subcontract is a cost-sharing subcontract, includes both the University's and the Subcontractor's share of the cost.

(b) The schedule specifies the amount presently available for payment by the University and allotted to the subcontract, the items covered, the University's share of the cost if the subcontract is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the University will allot additional funds incrementally to the subcontract up to the full estimated cost to the University specified in the schedule, exclusive of any fee. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which the total amount paid and payable by the University under the subcontract approximates but does not exceed the total amount actually allotted by the University to the subcontract.

(c) The Subcontractor shall notify the University in writing whenever it has reason to believe that the costs it expects to incur under the subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the subcontract by the University or, (2) if the subcontract is a cost-sharing subcontract, the amount then allotted to the subcontract by the University plus the Subcontractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the schedule.

(d) Sixty days before the end of the period specified in the schedule, the Subcontractor shall notify the University in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the schedule or otherwise agreed upon and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the schedule or another agreed-upon date, upon the Subcontractor's written request the University will terminate the subcontract on that date in accordance with the provisions of the Termination clause. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the University may terminate the subcontract on that later date.

(f) Except as required by other provisions of the subcontract,

specifically citing and stated to be an exception to this clause

(1) The University is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by the University to the subcontract; and

(2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause) or otherwise incur costs exceeding (i) the amount then allotted to the subcontract by the University or, (ii) if the subcontract is a cost-sharing subcontract, the amount then allotted by the University to the subcontract plus the Subcontractor's corresponding share, until the University notifies the Subcontractor in writing that the amount allotted by the University has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the University to the subcontract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the University or, (2) if the subcontract is a cost-sharing subcontract, the amount then allotted by the University to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the schedule. If the subcontract is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the schedule.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) above or from any source other than the Contract Administrator, shall affect the amount allotted by the University to the subcontract. In the absence of the specified notice, the University is not obligated to reimburse the Subcontractor for any costs exceeding the total amount allotted by the University to the subcontract, whether incurred during the course of the subcontract or because of termination.

(i) When and to the extent that the amount allotted by the University to the subcontract is increased, any costs the Subcontractor incurs before the increase that exceed (1) the amount previously allotted by the University or, (2) if the subcontract is a cost-sharing subcontract, the amount previously allotted by the University to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the University issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the University specified in the schedule unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the University to terminate this subcontract. If this subcontract is terminated, the University and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

(l) If the University does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the schedule equalling the percentage of completion of the work contemplated by the subcontract.

D10, Notice of Intent to Disallow Costs

(a) Notwithstanding any other clause of the subcontract

(1) At any time, the University may issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for

incurrence under the subcontract that have been determined not to be allowable under the subcontract terms; and

(2) After receiving a notice under subparagraph (1) above, the Subcontractor may submit a written response to the University with justification for allowance of the costs. If the Subcontractor responds within 60 days, the University shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this clause shall not affect the University's rights to take exception to incurred costs.

D11, Lower-Tier Subcontracts

(a) "Lower-tier subcontract" as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. The Subcontractor shall notify the University reasonably in advance of entering into any lower-tier subcontract if

(1) The proposed lower-tier subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed lower-tier subcontract is fixed-price and exceeds either \$25,000 or five percent of the total estimated costs of the subcontract;

(3) The proposed lower-tier subcontract has experimental, developmental, or research work as one of its purposes; or

(4) The subcontract is not a facilities subcontract and the proposed lower-tier subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or acquisition of any items of industrial facilities.

(b) (1) In the case of a proposed lower-tier subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$10,000, including any fee, (ii) is proposed to exceed \$100,000, or (iii) is one of a number of lower-tier subcontracts with a single lower-tier subcontractor under the subcontract and for the same or related goods or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (a) above shall include the information specified in paragraph (2) below.

(2) (i) A description of the goods or services to be subcontracted;

(ii) Identification of the type of subcontract to be used;

(iii) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained;

(iv) The proposed subcontract price and the Subcontractor's cost or price analysis;

(v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions;

(vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of the subcontract;

(vii) A negotiation memorandum reflecting

(A) The principal elements of the lower-tier subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price.

(E) The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Subcontractor shall obtain the University's written consent before placing any lower tier subcontract for which advance notification is required under paragraph (a) above. However, the University may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of the University.

(d) If the Subcontractor has an approved purchasing system and if the lower-tier subcontract is within the scope of such approval, the Subcontractor may enter into the lower-tier subcontracts described in paragraphs (a)(1) and (a)(2) above without the consent of the University, unless the subcontract is for the acquisition of major systems, subsystems, or their components.

(e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain the University's written consent before placing lower-tier subcontracts that have been selected for special surveillance and identified in the schedule.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any lower-tier cost under the subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.

(g) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.

(h) The Subcontractor shall give the University immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion

of the Subcontractor, may result in litigation related in any way to the subcontract, with respect to which the Subcontractor may be entitled to reimbursement from the University.

(i) (1) The Subcontractor shall insert in each price redetermination or incentive price revision type lower-tier subcontract under the subcontract the substance of the paragraph "Quarterly Limitation on Payments Statement" from the appropriate clause: Price Redetermination -Prospective (FAR 52.216-5), Price Redetermination - Retroactive (FAR 52.216-6), Incentive Price Revision - Firm Target (FAR 52.216-16), or Incentive Price Revision - Successive Targets clause (FAR 52.216-17). The substance included shall be modified in accordance with the paragraph entitled "Subcontracts" of the appropriate clause.

(2) The Subcontractor shall also include in each cost-reimbursement lower-tier subcontract under the subcontract a requirement that the lower-tier subcontractor insert the substance of the appropriate modified subparagraph referred to in paragraph (1) above in each lower-tier price redetermination or incentive price revision subcontract under that lower-tier subcontract.

(j) To facilitate small business participation in subcontracting, the Subcontractor agrees to provide progress payments on lower-tier subcontracts under the subcontract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of the subcontract.

(k) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.

D12, Inspection of Research and Development

(a) Definitions. "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with performing the subcontract.

"Work" as used in this clause includes data when the subcontract does not include the Warranty of Data clause.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to the University and covering the work under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.

(c) The University has the right to inspect and test all work called for by the subcontract to the extent practicable and at all places and times, including the period of performance and in any event before acceptance. The University may also inspect the facility or facilities of the Subcontractor or its lower-tier subcontractors engaged in performance of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the University performs any inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the subcontract, the University shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during subcontract performance, but no later than six months (or such other time as may be specified in the subcontract) after acceptance of all of the goods (other than designs, drawings, or reports) to be delivered under the subcontract, the University may require the Subcontractor to replace or correct work not meeting subcontract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Subcontractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may

(i) By subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the subcontract;

(ii) Require delivery of any undelivered goods and shall have the right to make an equitable reduction in any fixed fee paid or payable under the subcontract; or

(iii) Terminate the subcontract for default.

(2) Failure to agree on the amount of increased cost to be charged the Subcontractor or to the reduction in fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to remedy by correction or replacement and without cost to the University any failure by the Subcontractor to comply with the requirements of the subcontract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel have reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause shall apply in the same manner to corrected or replacement goods as to work originally delivered.

(j) The Subcontractor has no obligation or liability under the subcontract to correct or replace goods not meeting subcontract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the subcontract.

(k) Unless otherwise provided in the subcontract, the Subcontractor's obligations to correct or replace Government property shall be governed by the Property clause at D15.

D13, Modification of Clause D12 For a No Fee Subcontract

Substitute paragraphs (f) and (g) below in place of paragraphs (f) and (g) of clause D12.

(f) At any time during subcontract performance but not later than six months (or such other time as may be specified in the subcontract) after acceptance of all of the goods (other than designs, drawings, or reports) to be delivered under the subcontract, the University may require the Subcontractor to correct or replace work not meeting subcontract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) below, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Subcontractor shall not tender for acceptance any corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.

(g) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may (1) by subcontract or other means, perform the replacement or correction and charge to the Subcontractor any increased cost, (2) require delivery of any undelivered goods, or (3) terminate the subcontract for default. Failure to agree on the amount of increased cost to be charged to the Subcontractor shall be a dispute.

D14, Changes

(a) The University may at any time by written change order and without notice to the sureties, if any, make changes within the general scope of the subcontract in any one or more of the following:

- (1) Drawings, designs, or specifications;
- (2) Method of shipment or packing; or
- (3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order or otherwise affecting any other terms and conditions of the subcontract, the University shall make an equitable adjustment in (1) the estimated cost, delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.

(c) The Subcontractor must submit any proposal for adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the

subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

D15, Property

(a) University-furnished Government Property.

(1) The University shall deliver to the Subcontractor for use in connection with and under the terms of the subcontract, the Government owned property (hereafter referred to as "Government property") described in the schedule or specifications, together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property.

(2) The delivery or performance dates for this subcontract are based upon the expectation that Government property suitable for use will be delivered to the Subcontractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.

(3) If Government property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the University, detailing the facts, and, as directed by the University and at University expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the University shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government property is not delivered to the Subcontractor by the required time, the University shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government Property.

(1) The University may by written notice (i) decrease the Government property provided or to be provided under the subcontract or (ii) substitute other Government property for the property to be provided by the Government or to be acquired by the Subcontractor for the University under the subcontract. The Subcontractor shall promptly take such action that the University may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Subcontractor's written request, the University shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the University has agreed in the schedule to make such property available for performing the subcontract and there is any

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other subcontract or lease.

(c) Title in Government Property.

(1) The Government shall retain title to all Government property.

(2) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract shall pass to and vest in the Government upon the lower-tier

subcontractor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Subcontractor, shall pass to and vest in the Government upon

(i) Issuance of the property for use in subcontract performance;

(ii) Commencement of processing of the property or use in subcontract performance; or

(iii) Reimbursement of the cost of the property by the University, whichever occurs first.

(4) All Government property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the University or the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property. Government property shall be used only for performing the subcontract, unless otherwise provided in the subcontract or approved by the University.

(e) Property Administration.

(1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with FAR Subpart 45.5 and DEAR Subpart 945.5, as in effect on the date of the subcontract.

(2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DEAR Subpart 945.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the University or the Government under the subcontract, the University shall replace the items or the Subcontractor shall make such repairs as the University directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the University. When any property for which the University is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access. The University and the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited Risk of Loss.

(1) The term "Subcontractor's managerial personnel" means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

(i) All or substantially all of the Subcontractor's business;

(ii) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or

(iii) A separate and complete major industrial operation connected with performing the subcontract.

(2) The Subcontractor shall not be liable for loss or destruction of or damage to the Government property provided under the subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (3) and (4) below.

(3) The Subcontractor shall be responsible for loss or destruction of or damage to the Government property provided under the subcontract (including expenses incidental to such loss, destruction, or damage)

(i) That results from a risk expressly required to be insured under the subcontract but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed but only to the extent of such insurance or reimbursement;

(iii) For which the Subcontractor is otherwise responsible under the express terms of the subcontract;

(iv) That results from willful misconduct or lack of good faith by the Subcontractor's managerial personnel; or

(v) That results from a failure on the part of the Subcontractor, because of willful misconduct or lack of good faith by the Subcontractor's managerial personnel to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4) (i) If the Subcontractor fails to act as provided by paragraph (g)(3)(v) above after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the University's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith by the Subcontractor's managerial personnel.

(ii) In such event, any loss or destruction of or damage to the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage

(A) Did not result from the Subcontractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Subcontractor.

(5) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of or damage to the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of and be responsible for any loss or damage to the property while in the possession or control of the lower-tier subcontractor except to the extent that the lower-tier subcontract, with the advance approval of the University, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when

received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.

(6) Upon loss or destruction of or damage to Government property provided under the subcontract, the Subcontractor shall so notify the University and shall communicate with the loss and salvage organization, if any, designated by the University. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the University-furnished Government property from further damage, separate the damaged and undamaged University-furnished Government property, put all the affected University-furnished Government property in the best possible order, and furnish to the University a statement of

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the University directs. If the Government property is destroyed or damaged beyond practical repair or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, and with the approval of and subject to any conditions imposed by the University the Subcontractor may sell such property for the account of the University and the Government. Such sales may be made in order to minimize the loss to the University and the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this paragraph (g)(7) and in accordance with paragraph (h) of this clause. However, the University or the Government may directly reimburse the loss and salvage organization for any of their charges. The University shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Subcontractor shall not be reimbursed for and shall not include as an item of overhead the cost of insurance or of any reserve covering risk of loss or destruction of or damage to Government property, except to the extent that the University may have expressly required the Subcontractor to carry such insurance under another provision of the subcontract.

(9) If the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of or damage to Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the University or the Government as directed by the University.

(10) The Subcontractor shall do nothing to prejudice the University's or the Government's rights to recover against third parties for any loss or destruction of or damage to Government property. Upon the request of the University and at the University's or the Government's expense, the Subcontractor shall furnish to the University or the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the University or the Government) in obtaining recovery. In addition, when a lower-tier subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Subcontractor shall

enforce for the benefit of the University and the Government the liability of the lower-tier subcontractor for such loss, destruction, or damage.

(h) Equitable Adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. The University may initiate an equitable adjustment in favor of the University when appropriate. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The University shall not be liable to suit for breach of contract for

(1) Any delay in delivery of Government property;

(2) Delivery of Government property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government property; or

(4) Failure to repair or replace Government property for which the University is responsible.

(i) Final Accounting and Disposition of Government Property. Upon completing the subcontract or at such earlier dates that may be fixed by the University and in a form acceptable to the University, the Subcontractor shall submit inventory schedules covering all items of Government property not consumed in performing the subcontract or delivered to the University. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the University. The net proceeds of any such disposal shall be credited to the cost of the work covered by the subcontract or shall be paid to the University or the Government as directed by the University. The foregoing provisions shall apply to scrap from Government property, provided, however, that the University may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants; and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.

(j) Abandonment and Restoration of Subcontractor's Premises. Unless otherwise provided herein, the University and the Government

(1) May abandon any Government property in place, at which time all obligations of the University and the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government property (listed in the schedule or specifications) is withdrawn or is unsuitable for the intended use or other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

D16, Substitute Paragraph (c) to Clause D15, Property

(For cost subcontracts for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.)

(c) Title.

(1) The Government shall retain title to all University-furnished Government property.

(2) All University-furnished Government property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property") are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract and that, under the provisions of the subcontract is to vest in the Government, shall pass to and vest in the Government upon the lower-tier subcontractor's delivery of such property. Title to all other property, the cost of which is to be reimbursed to the Subcontractor under the subcontract and that under the provisions of the subcontract is to vest in the Government, shall pass to and vest in the Government upon

(i) Issuance of the property for use in subcontract performance;

(ii) Commencement of processing of the property or its use in subcontract performance; or

(iii) Reimbursement of the cost of the property by the University, whichever occurs first.

(4) Title to equipment purchased with funds available for research and having an acquisition cost of less than \$1000 shall vest in the Subcontractor upon acquisition or as soon thereafter as feasible, provided that the Subcontractor obtain the University's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$1000 or more shall vest as set forth in the subcontract. If title to equipment vests in the Subcontractor under this paragraph (c)(4), the Subcontractor agrees that no charge will be made to the University or the Government for any depreciation, amortization, or use under any existing or future Government contract or University subcontract thereunder. The Subcontractor shall furnish the University a list of all goods to which title is vested in the Subcontractor under this paragraph (c)(4) within ten days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this subcontract, the Subcontractor accepts and agrees that

"No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."

D17, Termination

(a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part, if

(1) The University determines that a termination is in the

University's or the Government's interest; or

(2) The Subcontractor defaults in performing the subcontract and fails to cure the default within ten days (unless extended by the University) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for the convenience of the University, the extent of termination, and the effective date. If after termination for default, it is determined that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the University.

(c) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.

(3) Terminate all lower tier subcontracts to the extent they relate to the work terminated.

(4) Assign to the University or the Government, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part under the subcontract; the approval or ratification will be final for purposes of this clause.

(6) As directed by the University, transfer title to the Government (if not already transferred) and deliver to the University (i) the fabricated or unfabricated goods, work in process, completed work, and goods produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University, and (iii) the jigs, dies, fixtures, and other goods manufactured for the subcontract, the cost of which the Subcontractor has been or will be reimbursed for under the subcontract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the University may direct to protect and preserve the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in paragraph (6) above, provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The

proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.

(d) After expiration of the "plant clearance period" (see Subpart 45.6 of the FAR), the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and the University will remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 90 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended and the Subcontractor paid the agreed amount.

(g) If the Subcontractor and the University fail to agree on the amount of costs and/or fee to be paid because of the termination of work, the University shall determine by information available the amount, if any, due the Subcontractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under the subcontract and not previously paid for the performance of the subcontract before the effective date of the termination and those costs that may continue for a reasonable time with the approval of or as directed by the University, however, the Subcontractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.

(ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred and reasonably necessary to preserve, protect, or dispose of the termination inventory.

(4) A portion of the fee payable under the subcontract, determined as follows:

(i) If the subcontract is terminated for convenience, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in the Subcontractors' termination proposals, less previous payments for fee.

(ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of goods (or amount of services) delivered to and accepted by the University is to the total number of goods (or amount of services) of a like kind required by the subcontract.

(5) If the settlement includes only fee, it will be determined under paragraph (g)(4) above.

(h) The cost principles and procedures in Part 31 of the FAR shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Subcontractor shall have the right of appeal, under the Disputes clause of the subcontract, from any determination made by the University under paragraph (e) or (g) above or paragraph (k) below, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g), or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Subcontractor under this clause, there shall be deducted

(1) All unliquidated payments to the Subcontractor under the terminated portion of the subcontract;

(2) Any claim that the University has against the Subcontractor under the subcontract; and

(3) The agreed price for or the proceeds of sale of goods acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to the University.

(k) The Subcontractor and the University must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The University shall amend the subcontract to reflect the agreement.

(1) (1) Under the terms and conditions the University prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall

be computed for the period from the date the Subcontractor receives the excess payment to the date the excess is repaid. Interest shall not be charged on any excess payment because of a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition or until a later date determined by the University because of the circumstances.

(m) The provisions of this clause relating to fee do not apply if the subcontract does not include a fee.

D18, Stop-Work Order

(a) At any time and by written stop-work order to the Subcontractor, the University may require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either

(1) Cancel the stop-work order or

(2) Terminate the work covered by the stop-work order as provided in the Termination clause.

(b) If a stop-work order issued under this clause is canceled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof and in any other terms of the subcontract that may be affected, and the subcontract shall be modified, in writing, accordingly, if

(1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and

(2) The Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim asserted at any time before final payment under the subcontract.

(c) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for default, the University shall allow, by equitable adjustment or other means, reasonable costs resulting from the stop-work order.

D19, Excusable Delays

(a) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform the

subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a lower-tier subcontractor at any tier to perform or make progress, and if the cause of the failure is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless

(1) The lower-tier subcontracted goods or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule;

(2) The University ordered the Subcontractor in writing to purchase these goods or services from another source; and

(3) The Subcontractor failed to comply reasonably with this order.

(c) Upon the request of the Subcontractor, the University shall ascertain the facts and extent of the failure. If the University determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the University under the Termination clause.

D20, Payment for Overtime Premiums

(a) The use of overtime is authorized under the subcontract if the overtime premium cost does not exceed the dollar amount identified in the schedule. In addition to this dollar ceiling, overtime is permitted only for work

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the University.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for subcontract completion and shall

(1) Identify the work unit, e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the University to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other University subcontracts, together with identification of each affected subcontract; and

(4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

SECTION E

CLAUSES FOR TIME-AND-MATERIALS AND LABOR-HOUR SUBCONTRACTS

The clauses listed below apply to time-and-materials and labor-hour type subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of clause numbers in the Schedule.

Clause Number	Title	Page
E1	Payments under Time-and-Materials and Labor-Hour Subcontracts	E-1
E2	Additional Paragraph (h) to Clause E-1 for Labor Hour Subcontracts for Which No Reimbursement for Materials Will Be Made	E-4
E3	Limitation on Withholding of Payments	E-4
E4	Limitation of University's Obligation (Time-and-Materials and Labor-Hour Subcontract)	E-4
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E1, Payments Under Time-and-Materials and Labor-Hour Subcontracts

Upon submission of invoices or vouchers approved by the University, the University shall pay the Subcontractor as follows.

(a) Hourly Rate.

(1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the University) to the University. The Subcontractor shall substantiate vouchers by evidence of actual payment and by individual daily job time cards, or other substantiation approved by the University. Promptly after receipt of each substantiated voucher and except as otherwise provided in the subcontract and subject to the terms of paragraph (e) below, the University shall pay the voucher as approved by the University.

(2) Unless otherwise prescribed in the schedule, the University shall withhold five percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Subcontractor as provided in paragraph (f) below.

(3) Unless the schedule prescribes otherwise, the hourly rates in the schedule shall not be varied by virtue of the Subcontractor's having performed work on an overtime basis. If no overtime rates are provided in the schedule and if overtime work is approved in advance by the University, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of the subcontract. If the schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the University.

(b) Materials and Lower-Tier Subcontracts.

(1) Allowable cost of direct materials shall be determined by the University in accordance with Subpart 31.2 of the FAR. Reasonable and allocable material handling costs may be included in the charge for material to the extent that they are clearly excluded from the hourly rate. Material handling costs are composed of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Subcontractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The Subcontractor shall be reimbursed for items and services purchased directly for the subcontract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. "Direct materials" as used in this clause are those materials that enter directly into the end product or that are used or consumed directly in connection with the furnishing of the end product.

(2) The cost of lower-tier subcontracts shall be reimbursable costs under this clause provided that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts paid to the lower-tier subcontractor in the same manner as for goods and services purchased directly for the subcontract under paragraph (1) above; however, the requirement shall not apply to a Subcontractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the lower-tier subcontract if the costs are included in the hourly rates payable under paragraph (a)(1) above.

(3) To the extent able, the Subcontractor shall

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the University and give the reasons. Credit shall be given to the University for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Subcontractor or that would have accrued except for the fault or neglect by the Subcontractor. The benefits lost without fault on the part of the Subcontractor or lost through the fault of the University shall not be deducted from gross costs.

(c) Total Cost. It is estimated that the total cost to the University for the performance of the subcontract shall not exceed the ceiling price set forth in the schedule, and the Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under the subcontract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing the subcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the schedule, the Subcontractor shall notify the University giving a revised estimate of the total price to the University for performance of the subcontract with supporting reasons and documentation. If at any time during performing the subcontract, the Subcontractor has reason to believe that the total price to the University for performing the subcontract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify the University giving a revised estimate of the total price for performance of the subcontract with supporting reasons and documentation. If at any time during performing the subcontract the University has reason to believe that the work to be required in performing the subcontract will be substantially greater or less than the stated ceiling price, the University will so advise the Subcontractor giving the then revised estimate of the total amount of effort to be required under the subcontract.

(d) Ceiling Price. The University shall not be obligated to pay the Subcontractor any amount exceeding the ceiling price in the schedule, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the schedule, unless and until the University shall have notified the Subcontractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under the subcontract. When and to the extent that the ceiling price set forth in the schedule has been increased, any hours expended and material costs incurred by the Subcontractor exceeding the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) Audit. At any time before final payment under the subcontract the University may request an audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts on preceding invoices or vouchers, that are found by the University not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Subcontractor as the "completion voucher" or "completion invoice" and substantiating material and upon compliance by the Subcontractor with all terms of this subcontract (including, without limitation, terms relating to patents and the terms of [f] and [g] below), the University shall promptly pay any balance due the Subcontractor. The completion invoice or voucher and

substantiating material shall be submitted by the Subcontractor as promptly as practicable following completion of the work under the subcontract, but in no event later than one year (or such longer period that the University may approve in writing) from the date of completion.

(f) Assignment. The Subcontractor and each assignee under an assignment entered into under the subcontract and in effect at the time of final payment under the subcontract shall execute and deliver, at the time of and as a condition precedent to final payment under the subcontract, a release discharging the University and the Government, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the subcontract, subject only to the following exceptions:

(1) Specified claims in stated amounts or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.

(2) Claims, with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising from performing the subcontract and that are not known to the Subcontractor on the date of the execution of the release and of which the Subcontractor gives notice in writing to the University not more than six years after the date of the release or the date of any notice to the Subcontractor that the University is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of the University and the Government against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of the subcontract relating to patents.

(g) Refunds. The Subcontractor agrees that any refunds, rebates, or credits, including any related interest, accruing to or received by the Subcontractor or any assignee that arise under the materials portion of the subcontract and for which the Subcontractor has received reimbursement shall be paid by the Subcontractor to the University. The Subcontractor and each assignee under an assignment entered into under the subcontract and in effect at the time of final payment under the subcontract shall execute and deliver, at the time of and as a condition precedent to final payment under the subcontract, an assignment to the University of such refunds, rebates, or credits, including any interest, in a form and substance satisfactory to the University.

E2, Additional Paragraph (h) to Clause E1 for Labor-Hour Subcontracts For Which No Reimbursement For Materials Will Be Made

(h) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

E3, Limitation on Withholding of Payments

If more than one clause or schedule term authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or schedule term at that time, provided that this limitation shall not apply to

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for the subcontract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the University determines that this limitation is inappropriate.

E4, Limitation of University's Obligation (Time and Materials and Labor-Hour Subcontracts)

(a) It is estimated that the total payment to the Subcontractor by the University for performance of the subcontract will not exceed the estimated amount set forth in the schedule, and the Subcontractor agrees to use the best efforts to perform the work specified in the schedule and all obligations under the subcontract within such estimated amount.

(b) The sum presently available for payment and allotted to the subcontract, the goods covered by it, and the period of performance that is estimated the allotted amount will cover are specified in the schedule. It is anticipated that from time to time additional funds will be allotted to the subcontract up to the full estimated amount. When additional funds are allotted from time to time for continued performance of the work, the parties will agree about the applicable estimated period of subcontract performance that will be covered by the funds, and the schedule will be amended accordingly. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point.

(c) The University will not be obligated to make any payment to the Subcontractor including payment with respect to lower-tier subcontracts and termination settlement costs exceeding the total amount from time to time allotted to this subcontract. However, when and to the extent that the total amount allotted to this subcontract has been increased, any invoice or voucher for time or materials with respect to a period before the increase and exceeding the amount previously allotted, will be paid as if the invoice or voucher were for time or materials with respect to a period after the increase in amount allotted.

(d) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed for the period set forth in the schedule, the Subcontractor will notify the University in writing within the next 30 days when the work will reach a point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause will approximate 85 percent of the total amount then allotted to the subcontract. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the schedule. Thirty days before the end of the period specified in the schedule, the Subcontractor will advise the University in writing about the estimated amount of additional funds that will be required, on the basis of the obligation of performance stated in paragraph (b) above for the timely performance of the work under the subcontract for such further period that may be specified in the schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the schedule or by an agreed substitute date and upon written request of the Subcontractor, the University will terminate the subcontract on that date or on a date to be specified in the request on which the Subcontractor, in the exercise of its reasonable judgment, estimates that it will have discharged its obligation to perform as stated in paragraph (b)

above, whichever is later, pursuant to the provision of the Termination clause.

(e) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will be covered by such funds. The provisions of paragraphs (b), (c), and (d) above will apply in like manner to the additional allotted funds and substituted date, and the subcontract will be amended accordingly.

(f) At any time before termination, the University may allot additional funds for the subcontract and, with the consent of the Subcontractor and after notice of termination, may rescind the termination in whole or in part and allot additional funds for this subcontract. (g) Nothing in this clause will affect the right of the University to terminate the subcontract pursuant to the Termination clause.

(h) For the purpose of this clause, the allotment or allotments specified in the schedule will not be decreased without the consent of the Subcontractor.

(i) This clause will apply and paragraph (c) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will not apply until such time that an amount equal to the total estimated amount of the subcontract set forth in the schedule is allotted to the subcontract, and thereafter paragraph (d) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will apply and this clause will not apply.

E5, Limitation of University's Obligation Under Task Ordering Agreements

(a) It is estimated that the total payment to the Subcontractor by the University for performance of the subcontract will not exceed the ceiling price amounts of task orders issued pursuant to the subcontract or the ceiling price amount of the subcontract. The Subcontractor agrees to use its best efforts to perform the work specified in the task orders issued hereunder and all obligations under the subcontract within such estimated amounts.

(b) The sum presently available for payment and allotted to the subcontract, the goods covered thereby, and the period of performance that is estimated the allotted amount will cover will be specified in the task orders. If task orders are not fully funded when they are issued, it is anticipated that from time to time additional funds will be allotted to such task orders up to their full estimated amount. When additional funds are allotted from time to time for continued performance of the work, the parties will agree about the applicable estimated period of performance that will be covered by the funds, and the task order will be amended accordingly. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point.

(c) The University will not be obligated to make any payment to the Subcontractor including payment in respect to lower-tier subcontracts and termination settlement costs exceeding the total amount from time to time allotted to task orders under the subcontract. However, when and to the extent that the total amount allotted to a task order has been increased, any invoice or voucher for time or materials with respect to a period before to the increase and exceeding the amount previously allotted will be paid as if the invoice or voucher were for time or materials with respect to a period after the increase in amount allotted.

(d) If the Subcontractor considers funds allotted to be inadequate to cover the work to be performed for the period set forth in a task order, the Subcontractor will notify the University in writing within the next 30 days when the work will reach a point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause will approximate 85 percent of the total amount then allotted to the task order. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the task order. Thirty days before the end of the period specified in the task order, the Subcontractor will advise the University in writing about the estimated amount of additional funds that will be required, on the basis of the obligation of performance stated in paragraph (b) above, for the timely performance of the work under the task order for such further period that may be specified in the task order or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the task order or by an agreed substitute date and upon written request of the Subcontractor, the University will terminate the task order on that date or on a date to be specified in the request on which the Subcontractor in the exercise of its reasonable judgment estimates that it will have discharged its obligation to perform as stated in paragraph (b) above, whichever is later, pursuant to the provision of the Termination clause.

(e) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will be covered by such funds. The provisions of paragraphs (b), (c), and (d) above will apply similarly to the additional allotted funds and substituted date, and the subcontract will be amended accordingly.

(f) At any time prior to termination, the University may allot additional funds for the subcontract and, with the consent of the Subcontractor and after notice of termination, may rescind the termination in whole or in part and allot additional funds for the subcontract.

(g) Nothing in this clause will affect the right of the University to terminate the subcontract pursuant to the Termination clause.

(h) For the purpose of this clause, the allotment or allotments specified in a task order will not be decreased without the consent of the Subcontractor.

(i) This clause will apply and paragraph (c) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will not apply until such time that an amount equal to the ceiling price amount of each task order is allotted to each respective task order, and thereafter paragraph (d) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will apply and this clause will not apply.

E6, Notice of Intent to Disallow Costs

(a) Notwithstanding any other clause of the subcontract

(1) The University may at any time issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under the subcontract that have been determined not to be allowable under the terms of the subcontract; and

(2) After receiving a notice under paragraph (1) above, the Subcontractor may submit a written response to the University with justification for allowance of the costs. If the Subcontractor does respond

within 60 days, the University shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this clause shall not affect the University's rights to take exception to incurred costs.

E7, Lower-Tier Subcontracts

(a) "Lower-tier subcontract" as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. Before placing any lower-tier subcontract for furnishing any of the work called for in the subcontract, the Subcontractor shall obtain the University's written consent, except for purchase of raw material or commercial stock items.

(b) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under lower-tier cost-reimbursement subcontracts shall not exceed the fee limitations in Subsection 16.301-4 of the FAR.

(c) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.

(d) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any lower-tier subcontract terms or conditions, (2) of the acceptability of any lower-tier subcontract price or of any amount paid under any lower-tier subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.

E8, Inspection

(a) Definitions. "Subcontractor's managerial personnel" as used in this clause means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of the subcontract.

"Materials" as used in this clause includes data when the subcontract does not include the Warranty of Data clause.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to the University and covering the material, fabricating methods, work, and services under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.

(c) The University has the right to inspect and test all materials furnished and services performed under the subcontract to the extent practicable and at all places and times, including the period of performance, and in any event before acceptance. The University may also inspect the

facility or facilities of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the University performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the subcontract, the University shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery unless accepted earlier.

(f) At any time during subcontract performance but not later than six months (or such other time that may be specified in the subcontract) after acceptance of the services or materials last delivered under the subcontract, the University may require the Subcontractor to replace or correct services or materials that at time of delivery failed to meet subcontract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under clause E1, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction and, when required, shall disclose the corrective action taken.

(g) (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the University), the University may

(i) By subcontract or other means, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under the subcontract; or

(ii) Terminate the subcontract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Subcontractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to remedy by correction or replacement and without cost to the University any failure by the Subcontractor to comply with the requirements of the subcontract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel have reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under the subcontract.

(j) The Subcontractor has no obligation or liability under the subcontract to correct or replace materials and services that at time of delivery do not meet subcontract requirements, except as provided in this clause or that may be otherwise specified in the subcontract.

(k) Unless otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace Government property shall be governed by the

Property clause at E11.

E9, Alternate Paragraph (e) to Clause E8 for Inspection at the Subcontractor's Facility

Paragraph (e) of Clause E8 is hereby deleted and superseded by the following.

(e) The University shall inspect for acceptance all goods to be furnished under the subcontract at the Subcontractor's facility or facilities specified in the subcontract, or at any other facility or facilities approved for such purpose in writing by the University. The Subcontractor shall inform the University when the work is ready for inspection. The University reserves the right to charge the Subcontractor any additional cost of University inspection and test when goods are not ready at the time for which inspection and test is requested by the Subcontractor.

E10, Changes

(a) At any time, by written order, and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:

- (1) Drawings, designs, or specifications;
- (2) Method of shipment or packing;
- (3) Place of delivery; or
- (4) Amount of University-furnished Government property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performing any part of the work under the subcontract, whether or not the result is specified in the change order, or otherwise affects any other terms and conditions of the subcontract, the University shall make an equitable adjustment in the ceiling price, hourly rates, delivery schedule, and other affected terms and shall modify the subcontract accordingly.

(c) The Subcontractor must submit any "proposal for adjustment" (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

E11, Property

(a) University-furnished Government Property.

(1) The University shall deliver to the Subcontractor for use in connection with and under the terms of the subcontract the Government owned property (hereafter referred to as "Government property") described in the schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property.

(2) The delivery or performance dates for the subcontract are based upon the expectation that Government property suitable for use (except property furnished "as-is") will be delivered to the Subcontractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.

(3) If Government property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the University, detailing the facts, and, as directly by the University and at University expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the University shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government property is not delivered to the Subcontractor by the required time, the University shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government Property

(1) The University may by written notice (i) decrease the Government property provided or to be provided under the subcontract or (ii) substitute other Government property for the property to be provided by the Government or to be acquired by the Subcontractor for the University under the subcontract. The Subcontractor shall promptly take such action as the University may direct regarding the removal, shipment or disposal of the property covered by this notice.

(2) Upon the Subcontractor's written request, the University shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the University has agreed in the Schedule to make such property available for performing the subcontract and there is any

(i) Decrease or substitution in this property pursuant to subparagraph (b) (1) above; or

(ii) Withdrawal of authority to use property, if provided under any other subcontract or lease.

(c) Title in Government Property.

(1) The Government shall retain title to all Government property furnished by the University.

(2) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract shall pass to and vest in the Government upon the lower-tier subcontractor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Subcontractors, shall pass to and vest in the Government upon

(i) Issuance of the property for use in subcontract performance;

(ii) Commencement of processing of the property or use in subcontract performance; or

(iii) Reimbursement of the cost of the property by the University, whichever, occurs first.

(4) All Government property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be

affected by its incorporation into or attachment to any property not owned by the university or the Government, nor shall Government property become a fixture or lost its identity as personal property by being attached to any real property.

(d) Use of Government Property. Government property shall be used only for performing the subcontract, unless otherwise provided in the subcontract or approved by the University.

(e) Property Administration.

(1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with FAR Subpart 45.5 and DEAR Subpart 945.5.

(2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DEAR Subpart 945.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the University or the Government under the subcontract, the University shall replace the items or the Subcontractor shall make such repairs as the University directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the University. When any property for which the University is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access. The university and the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited Risk of Loss.

(1) The term "Subcontractor's managerial personnel" means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

(i) All or substantially all of the Subcontractor's business;

(ii) All or substantially all of the Subcontractor's operation at any one facility, or separate location at which the subcontract is being performed; or

(iii) A separate and complete major industrial operation connected with performing the subcontract.

(2) The subcontractor shall not be liable for loss or destruction of or damage to the Government property provided under the subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (2) and (3) below.

(3) The Subcontractor shall be responsible for loss or destruction of or damage to the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage)

(i) That results from a risk expressly required to be insured under the subcontract but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed but only to the extent of such insurance or reimbursement;

(iii) For which the Subcontractor is otherwise responsible under the express terms of the subcontract;

(iv) That results from willful misconduct or lack of good faith by the Subcontractor's managerial personnel; or

(v) That results from a failure on the part of the Subcontractor because of willful misconduct or lack of good faith by the Subcontractor's managerial personnel to establish and administer a program or system for the control, use protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4) (i) If the Subcontractor fails to act as provided by paragraph (g)(3)(v) above after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the University's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith by the Subcontractor's managerial personnel.

(ii) In such event, any loss or destruction of or damage to the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage

(A) Did not result from the Subcontractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Subcontractor.

(5) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of or damage to the property as set forth above.

However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of and be responsible for any loss or damage to the property while in the possession or control of the lower-tier subcontractor except to the extent that the lower-tier subcontract, with the advance approval of the University, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontractor shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.

(6) Upon loss or destruction of or damage to government property provided under the subcontract, the Subcontractor shall so notify the University and shall communicate with the loss and salvage organization, if any, designated by the University.

With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the University-furnished Government property from further damage, separate the damaged and undamaged University-furnished Government property, put all the affected University-furnished Government property in the best possible order, and furnish to the University a state of

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) the Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the University directs. If the government

property is destroyed or damaged beyond practical repair or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical and the approval of and subject to any conditions imposed by the University, the Subcontractor may sell such property for the account of the University and the Government. Such sales may be made in order to minimize the loss to the University and the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this paragraph (g)(7) and in accordance with paragraph (h) of this clause. However, the University or the Government may directly reimburse the loss and salvage organization for any of their charges. The University shall give regard to the Subcontractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Subcontractor shall not be reimbursed for and shall not include as an item of overhead the cost of insurance or of any reserve covering risk of loss or destruction of or damage to Government property, except to the extent that the University may have expressly required the Subcontractor to carry such insurance under another provision of the subcontract.

(9) If the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of or damage to Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitable reimburse the University or the Government, as directed by the University.

(10) The Subcontractor shall do nothing to prejudice the University's or the Government's rights to recover against third parties for any loss or destruction of or damage to Government property. Upon the request of the University and at the University's or the Government's expense, the Subcontractor shall furnish to the University or the Government all reasonable assistance and cooperation (including the prosecution of suite and the execution of instruments of assignment in favor of the University or the Government) in obtaining recovery. In addition, when a lower-tier subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Subcontractor shall enforce for the benefit of the University or the Government the liability of the lower-tier subcontractor for such loss, destruction, or damage.

(h) Equitable Adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. The University may initiate an equitable adjustment in favor of the University when appropriate. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The University shall not be liable to suit for breach of contract for

(1) Any delay in delivery of Government property;

(2) Delivery of Government property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government property; or

(4) Failure to repair or replace property for which the University is responsible.

(i) Final Accounting and Disposition of Government Property. Upon completing the Subcontract or at such earlier dates as may be fixed by the University and in a form acceptable to the University, the Subcontractor shall submit inventory schedules covering all items of Government property not consumed in performing the subcontract or delivered to the University. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the University. The net proceeds of any such disposal shall be credited to the cost of the work covered by the subcontract or shall be paid to the University or the Government as directed by the University. The foregoing provisions shall apply to scrap from Government property, provided, however, that the University may authorize or direct the Subcontractor to omit

from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants; and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.

(j) Abandonment and Restoration of Subcontractor's Premises. Unless otherwise provided herein, the University or the Government

(1) May abandon any Government property in place, at which time all obligations of the University or the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use or other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

E12, Substitute Paragraph (c) to Clause E11, Property

(For cost subcontracts for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.)

(c) Title.

(1) The Government shall retain title to all Government property furnished by the University.

(2) All Government property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract and that, under the provisions of the subcontract is to vest in the Government, shall pass to and vest in the Government upon

(i) Issuance of the property for use in subcontract performance;

(ii) Commencement of processing of the property or its use in subcontract performance; or

(iii) Reimbursement of the cost of the property by the University, whichever occurs first.

(4) Title to equipment purchased with funds available for research and having an acquisition cost of less than \$1,000 shall vest in the Subcontractor upon acquisition or as soon thereafter as feasible; provided, that the Subcontractor obtain the University's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$1,000 or more shall vest as set forth in the subcontract. If title to equipment vests in the subcontractor under this paragraph (c)(4), the Subcontractor agrees that no charge will be made to the University or the Government for any depreciation, amortization, or use under any existing or future Government contract or University's subcontract thereunder. The Subcontractor shall

furnish the University a list of all equipment to which title is vested in the Subcontractor under this paragraph (c)(4) within ten days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing the subcontract, the Subcontractor accepts and agrees that

"No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."

E13, Termination

(a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part, if

(1) The University determines that a termination is in the University's or the Government's interest; or

(2) The Subcontractor defaults in performing the subcontract and fails to cure the default within ten days (unless extended by the University) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for the convenience of the University, the extent of termination, and the effective date. If after termination for default, it is determined that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination were for the convenience of the University.

(c) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further lower-tier subcontract or orders except as necessary to complete the continued portion of the subcontract.

(3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.

(4) Assign to the University or the Government, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part under the subcontract; the approval will be final for purposes of this clause.

(6) As directed by the University, transfer title to the Government (if not already transferred) and deliver to the University (i) the fabricated or unfabricated goods, work in process, completed work, and goods produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be

furnished to the University, and (iii) the jigs, dies, fixtures, and other goods manufactured for the subcontract, the cost of which the subcontractor has been or will be reimbursed under the subcontract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract and that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in paragraph (6) above, provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.

(d) After expiration of the "plant clearance period" (see subpart 45.6 of the FAR), the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove these items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and the University will remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 90 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due to the Subcontractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended and the Subcontractor paid the agreed amount.

(g) If the Subcontractor and the University fail to agree in whole or in part on the amount to be paid because of the termination of work, the University shall determine by information available the amount, if any, due the Subcontractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the University, include

(i) An amount for direct labor hours (as defined in the Schedule) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule less any hourly rate payments already made to the Subcontractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination not previously paid to the Subcontractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the University;

however, the Subcontractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in paragraph (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract; and

(v) The reasonable costs of settlement of the work terminated, including

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary to protect or dispose of the termination inventory.

(2) If the termination is for default of the Subcontractor, include the amounts computed under (1) above but omit

(i) Any amount for preparation of the Subcontractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the University.

(h) The cost principles and procedures in Part 31 of the FAR shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Subcontractor shall have the right of appeal, under the Disputes clause of the subcontract, from any determination made by the University under paragraph (e) or (g) above or paragraph (k) below, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g) or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Subcontractor under this clause, the University shall deduct

(1) All unliquidated payments to the Subcontractor under the terminated portion of the subcontract;

(2) Any claim that the University has against the Subcontractor under the subcontract; and

(3) The agreed price for, or the proceeds of sale of materials, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to the University.

(k) If the termination is partial, the Subcontractor may file with the University a proposal for an equitable adjustment of the price(s) for the continued portion of the subcontract. The University shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the University.

(l) (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for their

termination portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)920. Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment because of a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.

(m) The provisions of this clause relating to fee do not apply if the subcontract does not include a fee.

E14, Stop-Work Order

(a) At any time and by written order to the Subcontractor, the University may require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work-order during the period of work stoppage. Within a period of 90 days after a stop -work is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either

(1) Cancel the stop-work order or

(2) Terminate the work covered by the stop-work order as provided in the Termination Clause.

(b) If a stop-work order issued under this clause is cancelled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified in writing accordingly if

(1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and

(2) the Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim asserted at any time before final payment under the subcontract.

(c) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for default, the University shall allow, by equitable adjustment or other means, reasonable costs resulting from the stop-work order.

E-15 Excusable Delays

(a) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform the subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes are (1) acts of God or of the public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8)

freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a lower tier subcontractor at any tier to perform or make progress, and if the cause of the failure is beyond the control of both the Subcontractor and lower tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless

(1) The lower-tier subcontracted goods or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule;

(2) The University ordered the Subcontractor in writing to purchase these goods or services from another source; and

(3) The Subcontractor failed to comply reasonably with this order.

(c) Upon the request of the Subcontractor, the University shall ascertain the facts and extent of the failure. If the University determines that any failure to perform results from on or more of the causes above, the delivery schedule shall be revised, subject to the rights of the university under the Termination clause.